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International Maritime Committee

LIVERPOOL CONFERENCE

JUNE 1905

President: Mr. Justice Kennedy

I. — Draft-treaty on limitation of shipowners' liability.

II. — Conflicts of law as to maritime mortgages and privileged liens.

III. — Diplomatic international Conference, Brussels.

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INTERNATIONAL MARITIME COMMITTEE

BULLETIN N° 12

SUMMARY :

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(*See the Index*, page 324).

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The Liverpool conference, which met from the 14th to the 17th June 1905, has dealt with three principal objects:

1) the participation of Great-Britain in the Diplomatic Conference convened by the Government of Belgium on the Draft of an International Code as to Collisions and Salvage at sea;

2) the second reading of the draft-treaty on Limitation of Shipowners' Liability;

3) the first reading of the draft-treaty on Maritime Mortgages and Liens on Ships.

The question of conflicts of law as to Freight was also on the agenda-paper; but owing to lack of time, the Conference could not deal with it.

***

Great-Britain has not taken part in the first session of the Diplomatic Conference which met at Brussels, on the Belgian Government's invitation, from 21-st to 26-th February last. At the Liverpool Conference, Minister of State Beernaert reported on the results arrived at by the Diplomatic Conference, expressing thereby the hope to see Great-Britain sending representatives to the second session, to which the draft-codes, as amended by the first meeting, have been referred, and which was — then — to take place in September 1905. In sequence to these communications, Mr. F. H. Harrison, chairman of the *Liverpool Steamship Owners' Association* proposed to the British members of the Conference, representing shipowning, merchants and underwriters' interests, to vote a motion, requesting again His Majesty's Government to adhere to the Diplomatic Conference. This motion was seconded successively by Mr. W.

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English Harrison, K. C., vice-president of the *General Council of the Bar*; by Sir Alfred Jones, chairman of the Liverpool Chamber of Commerce and supported by Mr. Chas. Mc Arthur, M. P., Mr. F. S. Watts, chairman of the *Chamber of Shipping of the United Kingdom*, Mr. Lemon, vice-president of the *Institute of Londen Underwriters*, Mr. Douglas Owen, Secretary of the *Alliance Marine Insurance Cy*, Mr. William Gow, of the *Union Marine Insurance Cy* and by Mr. H. Cooper Rundell on behalf of the *Glasgow Underwriters' Association*. The resolution was carried unanimously by all the British members of the Conference.

Subsequently, the Liverpool Chamber of Commerce passed a resolution in support of the desire expressed by the British members of the Conference and in sequence of this, motions to the same effect were adopted by the following Associations :

The London Corn Trade Association.
The North of England Steamship Owners' Association.
The Liverpool Corn Trade Association.
The Liverpool Shipowners' Association.
The Liverpool Provision Trade Association.
The Chamber of Commerce of Glasgow.
The Cardiff Incorporated Shipowners' Association.
The Chamber of Commerce of Cardiff.
Newcastle and Gateshead Chamber of Commerce.
The Clyde Steam Shipowners' Association.
The Blackburn Chamber of Commerce.
The Bury Chamber of Commerce.
The Nottingham Chamber of Commerce.

These resolutions were submitted to the British Government. A question was asked, in the House of Lords by Lord Muskerry, and supported by Lord Alverstone, L. C.

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J., whilst Mr. Chas Mc Arthur insisted on the matter in the House of Commons. In reply, Lord Lansdowne and Earl Percy finally promised, on behalf of the Government, that Great-Britain would send an official representative to the second session of the Diplomatic Conference. This second session was then postponed until October 16 th.

On the other hand, the German Government had been also pressed again by a petition, due to the initiative of the influential German Association of Maritime Law and bearing the signatures of practically all the foremost representatives of German shipping and commercial interests. An expression of opinion so powerful could not fail to carry weight, and the German Government have announced that they would be represented at Brussels.

The work of the Diplomatic Conference therefore is fairly progressing. If it succeeds, — as we have reason to hope it will, — it will constitute the most important date which the history of maritime law had to record until now. It will in fact mean the beginning of a new departure more rational, more equitable and more human, as far as the legal relations governing the international sea-trade are concerned.

***

As to the matter of Limitation of Shipowners' Liability, the Liverpool Conference has shown once again that in order to solve the conflicts between British legislation and the law of all other nations, the compromise adopted at the London Confernce (1899) forces its way more and more in the opinion of business men. It would be vain indeed to hope that on a question of this kind, theoretical discussions should ever end ; but it becomes every day more apparent that if it be wished to put an end to the injustice and

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inconveniences arising out of the present discrepancy and conflict of law, there is no other practical remedy than that defended by the International Maritime Committee, and as a matter of fact no other is suggested. The London resolution does by no means imply the triumph of one system over the other; but it amalgamates both in an equitable formula. The adhesion given to the reform and the views expressed as to it at Liverpool on behalf of the *Liverpool Steamship Owners' Association* are most likely to carry weight with all practical men. We may therefore express the hope that the international settlement of this vexed question will be the universal adoption of the uniform limit restricting the shipowner's liability, without distinction of nationality or flag, to ship and freight, with a maximum of £ 8 per ton.

The draft submitted to the Conference for discussion extended this rule, as most of the continental legislations do, — not only to such damages for which the shipowner is liable on account of the wrongful acts of his servants, but also to contracts entered into by the latter or the execution of which is lying within the limits of their legal capacity. This extension was opposed by several British members; after a careful discussion, the continental members gave way to the objections and the wording of the draft-treaty was modified in order to cover only those cases as come under the present British law, which includes the liability deriving out of contracts as far as damage is occasionned.

Various questions of detail have given raise to interesting discussions and finally the Conference, after having once more ratified the principle on which the draft-treaty is based, has instructed a sub-committee to submit to the next conference the draft in its definitive form.

The system proposed for the first time in 1899 at the London Conference, has thus successively been approved

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in 1900 at Paris, in 1902 at Hamburg, in 1904 at Amsterdam and finally in 1905 at Liverpool.

* * *

The draft-treaty on maritime Mortgages and Liens on Ships was for the first time submitted to the Conference. Two sittings have been devoted to these matters, the debate bearing especially on the determination of what claims would be considered as privileged rights and also on the order in which they should rank. The result of these discussions seems satisfactory and an understanding appears likely to be arrived at. Generally speaking, the Conference was agreed on giving the first rank, after judicial costs and public dues, to the claim for wages of master and crew ; then, according to the general opinion, would come the indemnity for salvage, and after that the lien for collision damages. The conflict of opinions has thus subsided since the last Amsterdam Conference, where not only a privileged right was denied to this kind of claims, by some representives but where there was a considerable difference of opinion amongst others as to its rank.

At the Liverpool meeting, the difference remaining came to this : on one side it was contended that the collison lien should rank in the same group as the salvage indemnity and similar claims, the inverse order of dates prevailing as to the order in which they ought to rank among themselves. On the other hand, the opinion was expressed that salvage claims ought always to rank prior to collision-claims, without there being any distinction as to the respective order to dates.

It is plain that the difference between these two views admits of conciliation and it was therefore decided to ask

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the sub-committee to prepare a definite draft, taking into account the different opinions expressed at the conference.

*
* *

The Conference has met in the great port of Liverpool with the most kind reception ; it was impossible indeed to add more cordiality to a richer hospitality. The expression of our sincere gratitude has been transmitted to our hosts and the foreign members will retain a grateful remembrance of the generous hospitality shown to them by the Lord Mayor and the city of Liverpool, the Liverpool Chamber of Commerce, the Liverpool Steamship Owners' Association, the Members of the Bar and the Law Society ; not less hearty thanks being due to the Cunard Company for their splendid reception on board their s/s « Campania ».

The complete success of the meeting is particularly due to M. Justice Kennedy for the most able way in which he descharged his duties as a chairman.

At the same time, we cannot omit to mention the undefatigable zeal spent on the local organisation of the Conference by Sir Alfred Jones, Chas. Mc Arthur, M. P. and the Hon. Secretaries Mr Wm. Gow, Mr Leslie Scott, and Mr James D. Barker.

LOUIS FRANCK

Hon. General Secretary.

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Resolutions of the Liverpool Conference

I

International Diplomatic Conference

The British members of the Conference voted unanimously the following resolution :

« That the representatives of the British shipowners, merchants, and underwriters attending this conference are of opinion that in the interests of the international commerce of this country, it is of the first importance that his Majesty's Government should be represented at the International Conference convened by the Government of Belgium to consider the draft codes relating to collisions at sea and salvage,

and that the secretaries are requested respectfully to submit a copy of this resolution to his Majesty's Government. »

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Resolutions of the Liverpool Conference

II

Draft Traety on the Limitation of the Shipowner's Liability (*)

(Adopted under the reserves contained in the relation printed below)

ARTICLE I

Where any damage or loss

(1) is caused to any goods, merchandise or any other things whatsoever, on board the ship or

(2) is caused by reason of the improper navigation of such ship to any other vessel or to any goods merchandise or other things whatsoever on board any other vessel

(3) is caused to dykes, quays and other fixed objects, as well as the removal of wrecks,

the liability of the shipowner is for each voyage limited :

a) To the ship or its value at the end of the voyage, at the option of the owner.

b) To the net freight for the voyage until its termination.

c) To the indemnities due to the owner for general average, collision or other damage suffered by the ship during the voyage, subject to deduction of the expenses

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* See the draft-treaty which was proposed for discussion on page 1.

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incurred in putting the ship in a fit state to complete the voyage.

The right of the creditors does not include the claim of the owner against the insurer.

By net freight ist meant the gross freight and passage money even if paid in advance, deduction being made of the charges which are proper to the same.

The voyage will be considered ended after final discharge of the goods and passengers happening to be on board the ship and shown on the manifest at the moment when the obligation has arisen and in case of successive obligations after final discharge of the whole of the goods and passengers happening to be on board at the moment both of the one and of the other event.

If the ship carries neither goods nor passengers, the voyage will be considered ended at the first port it puts into or at the particular port where it happens to be.

Article II.

If the owner elects for the abandonment of the ship and does not carry this into effect until some time after the end of the voyage, he is only freed up to the amount of the value of the ship at the moment of the abandonment and he remains bound for the difference between this value and that which the ship had at the end of the voyage.

Article III

In the case provided for in article II and to provide for the case where the owner elects so far as concerns the ship, for the payment of its value at the end of the voyage, the valuation may at every time after the end of the voyage be judicially fixed by proceedings taken after due notice to

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the other side at the demand of the party who is the most diligent.

Article IV.

The owner has the right to substitute for the modes of obtaining freedom from liability provided in article I, payment of an indemnity limited for each voyage to £ 8. per ton of the gross tonnage of his ship.

Article V.

If there exists a priority of lien upon the ship or upon the freight in favour of creditors in respect of whom limitation of liability is not admitted, the owner of the ship will be personally bound to make up in specie to the extent of the sums first collected by such creditors, the amount forming the limit of his liability.

Article VI.

Limitation of liability determined according to the preceding articles is not applicable to the case of personal fault of the owner. It is not admitted for the wages of master and crew.

Article VII.

When according to the laws applicable, the limitation of liability for damage to property is different from that for personal injury, the present treaty shall only have effect so far as concerns damage to property.

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RESOLUTION

« That this Conference, approving the terms of the « Draft-treaty on the Limitation of Shipowners' Liabi- « lity as altered by the resolutions passed at the present « meetings, requests the Permanent Bureau to appoint a « Sub-Committee

« *a)* to revise the details of the Draft-treaty in order « satisfactorily to provide for the proper application of « the principles approved by this Conference.

« *b)* to consider the questions of principle as well as « detail involved in *(c)* and in the proposed additional « sub-clause (*d*) as drawn in M. Acland's amendment & « also the more precise definition of the terms freight « and net-freight.

« *c*) to report as soon as practicable to the Permanent « Bureau. »

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Resolutions of the Liverpool Conference

III

Maritime Mortgages & Liens on Ships (1)

The Conference adopted unanimously the following proposition moved by Mr. JUSTICE KENNEDY, the president :

« That this Conference, seeing that there seems to be » every prospect, in view of the valuable discussions » and suggestions made to the present Conference, of » the adjustment of existing differences of opinion, » and further that the form and language of the Draft- » Treaty as it stands require revision, requests the » Permanent Bureau to refer the matter again to the » existing subcommittee, adding to its number :

» MM. Morel Spiers, Le Jeune, Leslie Scott, Wm. » Gow, Simpson. »

The sub-committee will therefore be composed as follows :

MM. R. B. D. Acland, (London) ; C. D. Asser, Jr. (Amsterdam) ; Fr. Berlingieri, (Genoa) ; T. G. Carver,

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(1) See the Draft-treaty on these matters on page 4.

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(London); Louis Franck, (Antwerp); Henri Fromageot, (Paris); Wm Gow, (Liverpool); Leon Hennebicq, (Brussels); Ch. Le Jeune, (Antwerp); Ch. Lyon-Caen, (Paris); Prof. Dr. A. Marghieri, (Naples); B. Morel-Spiers, (Dunkirk); Dr. Alfred Sieveking, (Hamburg); Leslie Scott, (Liverpool); James Simpson, (Liverpool); Dr. Ant. Vio, (Fiume).

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International Maritime Committee

Statutes

Art. 1. The International Maritime Committee propose :

a) To further, by conferences, publications and divers works, the unification of maritime law;

b) to encourage the creation of national associations for the unification of maritime law;

c) to maintain, between these associations, regular communication and united action.

Art. 2. The International Maritime Committee is composed of titulary members and of delegates of the National Associations.

The founding members are, by right, titulary members.

Their number is limited to nine for each country.

The number of delegates of national associations is limited to six for each country.

To complete the number of titulary members, as when a vacancy occurs, an election may be held at the first meeting following the constitution of the committee or the vacancy.

The election shall be decided by secret ballot of the titulary members, the candidate receiving the absolute majority being successful.

Art. 3. Each conference shall choose its own officers and take the necessary steps for the execution of its resolutions and the preparation of following reunions.

The following article however shall provide for such cases where no such decisions have been taken.

Art. 4. — In the interval between the conferences, the administration of the committee shall be entrusted to a permanent board.

The permanent board shall be appointed for three years and shall consist of : —

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1° A president, vice-president and secretary, who shall provide for the maintenance of regular communication between the national associations, the management of the committee and the execution of its decisions.

2° Of members, in the proportion of one for each country represented in the committee, chosen from among either the titulary members or the delegates of the national associations.

The board thus formed shall, should it be necessary, draw up the programme of the International Conferences.

The members of the permanent board are appointed by the International Maritime Committee. The election are by secret ballot, the candidate receiving the absolute majority being successful.

Art. 5. — The titulary members of the International Maritime Committee pay an annual subscription of twenty five francs.

Art. 6. — The national associations shall be invited to contribute to the expenses of the committee.

Art. 7. — The length of time during which a titulary member may sit is indefinite and can be terminated either by resignation or by deliberation of the committee.

Art. 8. — The present statutes may always be modified, at the proposal of the board and after having been placed upon the order of the day of the reunion.

Art. 9. — The International Maritime Committee shal meet, unless unforeseen circumstances prevent, at least once a year. It shall determine directly or by delegation the time and place of such conference. An extraordinary meeting may be called by the permanent board or at the request of fifteen members, in which case the meeting shall be held in the country where the headquarters of the permanent board are established.

No vote shall be considered valid if not more than half of the countries affiliated to the committee are present and if the vote does not give an absolute majority of the countries present, the members voting by nations.

Art. 10. — Every three years the committee shall designate the headquarters of the permanent board.

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Permanent Board

OF THE INTERNATIONAL MARITIME COMMITTEE

FOR 1904—1907

President : M. A. BEERNAERT, Minister of State, late Minister of Finances, late President of the Chamber of Deputies, Member of the « Institut de France », President of the Belgian Association of Maritime Law, &c., Brussels.

Vice-Président : M. CHARLES LE JEUNE, Vice-Chairman of the « Association belge pour l'Unification du Droit Maritime » Vice president of the International Law Association. Antwerp.

Gen. Secretary : M. LOUIS FRANCK, Advocate, Hon. Secretary of the Belgian Association of Maritime Law, Vice-president of the International Law Association, Antwerp.

Members : MM. CH. MAC ARTHUR, M. P. late Chairman of the Liverpool Chamber of Commerce (England)

F. C. AUTRAN, Advocate, Editor of the « Revue Internationale de Droit Maritime » of Marseille, President of the « Association du Droit Maritime » of France, Marseille. (France)

COLOMAN DE FEST, Counsellor at the Ministry, Vice-President of the Royal Maritime Government, Managing director of the Hungarian Association of Maritime Law, Fiume (Hungary).

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Members : MM. E. DE GUNTHER, Chairman of the Swedish Association of Maritime Law of Stockholm. (Sweden).

A. HINDENBURG, Advocate at the Supreme Court Chairman of the Danish Association of Maritime Law. Copenhagen. (Denmark).

Dr. G. MARTINOLICH, Advocate, Secretary of the Austrian Association of Maritime Law, Trieste (Austria).

Dr. G. MATSUNAMI, Professor at the University, Secretary of the Japanese Association of Maritime Law, Tokio, (Japan),

Dr. OSCAR PLATOU, Professor of Maritime Law, President of the Norvegian Association of Maritime Law, Christiania (Norway).

HARRINGTON PUTNAM, Counsellor at law, Member of the Council of the United-States' Maritime Law Association, New-York. (United States America).

E. N. RAHUSEN, Senator and Advocate, Chairman of the Dutch Committee of Maritime law, Amsterdam. (Netherlands).

Dr. F. SIEVEKING, President of the High Hanseatic Court, President of the « Deutscher Verein für Internationales Seerecht », Hamburg.

Dr. A. MARGHIERI, Advocate and Deputy, Professor at the University, President of the Italian Association of Maritime Law, Naples. (Italy).

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List of Members

OF THE INTERNATIONAL MARITIME COMMITTEE

MM. Lord ALVERSTONE, Lord Chief Justice of Englund, President of the Maritime Law Committee, London.

EARL APPONYI, actual Councillor of His I. & R. Majesty : deputy, President of the Hongarian Association of Maritime Law, Buda-Pesth.

Baron ARICHI, Vice-Admiral, Tokio.

Prof. ASCOLI, of the University of Venise.

T. M. C. ASSER, Minister of State, late Professor at the University of Amsterdam, member of the Council of State, The Hague.

AXEL APPELBERG, Underwriter, Gothenburg.

F. C. AUTRAN, Advocate, Director of the Revue internationale de Droit Maritime, Marseille.

BALLIN, General Manager of the Hamburg America Linie, Hamburg.

Charles BAUSS, Advocate, Antwerp.

A. BEERNAERT, Minister of State, late Minister of Finances, Brussels.

DE BERENCREUTZ, Consul general of Sweden & Norway, Copenhague.

FRANCESCO BERLINGIERI, Professor at the University of Genua.

Hon. ADDISSON BROWN, Judge at the District Court of the U. S., New-York.

T. G. CARVER, K. C., London.

G. CERRUTI, President of the Italian « *Veritas* » and underwriter, Genua.

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MM. Dr Christophersen, Consul general of Sweden & Norway, President of the Norwegian Commission for the Security of navigation, Antwerp.

Edouard Clunet, Advocate at the High Court of Paris.

His Exc. M. Victor Concas, Director at the Marine Ministry, Madrid.

Collisto Cosulich, Imperial councillor, Shipowner, Vienna.

E. de Gunther, President of the Swedish International Maritime Law Association, Stockholm.

L. de Valroger, Ex-President of the order of Advocates of the Court of Cassation, Paris.

C. A. de Reuterskiold, Professor of the University of Upsal (Sweden).

Comm. E. de Richetti, Underwriter, Trieste.

Frédéric Dodge, Advocate, Boston.

Arthur Duncker, President of the Maritime Underwriters Committee, Hamburg.

Coloman de Fest, Councillor of the ministry, Vice-President of the Royal Maritime Government, Fiume.

Engelhard Eger, Shipowner, Christiania.

K. W. Elmslie, Average Adjuster, London.

Louis Franck, Advocate, General Secretary of the International Maritime Committee and of the Belgian Association of Maritime Law, Vice-President of the International Law Association, Antwerp.

Dr Henri Fromageot, Advocate at the Court of Appeal, Paris.

Sir John Glover, Chairman of the Committee of Lloyd's Register, London.

M. Wm. Goodrich, Judge at the Court of Appeal of New-York.

Paul Govare, Advocate at the High Court of Paris, Secretary of the Association internationale de la Marine, Paris.

William Gow, (of the Union Marine Insurance Company, Liverpool).

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MM. L. HELDRING, Manager of the « Koninklijke Nederlandsche Stoomboot Maatschappij » Amsterdam.

Sir JOHN GRAY HILL, Ex-President of the *Law Society*, Secretary of the *Liverpool Steamshipowners Protection d'Ass*, &c., Liverpool.

A. HINDENBURG, President of the Danish Association of maritime Law, Copenhague.

COL. Sir HENRY HOZIER, Secretary of *Lloyds* Committee, London.

Sir ALFRED JONES K. C. M. G., Shipowner, Liverpool.

AXEL JOHNSON, Shipowner, Stockholm.

The Hon. Sir WILLIAM R. KENNEDY, Judge of the High Court of Justice, London.

REMPEI KONDO, President of the Navigation Company *Nippon Yusen Kaïsha*, Tokio.

JOH. KOTHE, Manager of the *Deutsche Levante Linie* Navig. Cy, Hamburg.

MASAYOSHI KOTO, Vice-President of the Navigation Comp. *Nippon Yushen Kaïsha*, Tokio.

ANDRÉ LEBON, President of the « Messageries Maritimes » Nav. Company, President of the Central Committee of French Shipowners. Paris.

CH. LE JEUNE, Vice-President of the *Association belge pour l'Unification du Droit maritime*, Antwerp.

B. C. J. LODER, Advocate Rotterdam.

CH. LYON-CAEN, Professor at the Faculté de Droit de Paris, Member of the Institut de France, Paris.

CH. MC ARTHUR, late President of the Chamber of Commerce, Member of Parliament, Liverpool.

O. MARAIS, Bâtonnier de l'ordre des Avocats à la Cour d'Appel, Rouen.

M. A. MARGHIERI, Professor at the University, President of the Italian Association of Maritime Law, Deputy, Naples.

F. DE MARTENS, Professor at the University of St-Petersburg.

President MARTIN of the High Hanseatic Court, Hamburg.

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MM. Dr G. Martinolich, Advocate, Secretary of the Austrian Association of Maritime Law, Trieste.

N. Matsunami, Professor of Maritime Law, Tokio.

Thos. R. Miller, Director of *The United Kingdom Mutual Steamship Assurance Association*, London.

Duke Mirelli, Judge at the Court of Appeal, Naples.

J. Stanley Mitcalfe, Hon. Secretary to the *North of England Steamship-Owners Association*, Newcastle on Tyne,

Dr Fr. Nagy, Professor at the University, Royal Councillor of the Court, Deputy, Buda-Pest.

Lieut.-Colonel J. Ovtchinnikoff, of the Russian Imperial Navy, St-Petersburg.

Douglas Owen, ex-Chairman of the Association of Average adjusters of Great Britain, Secretary of the *Alliance Marine Insurance Company*, London.

Edmond Picard, Bâtonnier de l'Ordre des Avocats à la Cour de Cassation de Belgique, Sénateur, Professeur à l'Institut des Hautes Etudes, Brussels.

the Hon. Sir Walther Phillimore, D. C. L. Judge of the High Court of Justice, London.

Dr Oscar Platou, Professor at the University, Christiania.

A. Plate, Deputy, Shipowner, President of the Chamber of Commerce, Rotterdam.

Ant. Poulson, Underwriter, Christiania.

Harrington Putnam, Advocate, New-York.

Dr. Aug. Schenker, Shipowner, Vienna.

Leslie F. Scott, barrister-at-law, Liverpool.

Leone Ad., Senigallia, Advocate, Naples.

Dr. F. Sieveking, President of the High Hanseatic Court, Hamburg.

Dr. Alfred Sieveking, Advocate, General Secretary of the German Maritime Law Association. (Hamburg.)

Germain Spée, Advocate, former chief Registerer of the Tribunal of Commerce, Antwerp.

C. Stubbs, LL. D. Advocate, London.

Dr. Russ, M. P., Vienna.

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MM. Baron DE TAUBE, Counciller at the Ministry of Foreign Affairs, St-Petersburg.

OTTO THORESEN, Shipowner, Christiania.

R. ULRICH, Secretary general of the *Internationaler Transportversicherungs Verband* and of the *Lloyd Germanique*, Berlin.

R. VERNEAUX, Chef du Çontentieux à la Compagnie des Messageries Maritimes, Paris.

Dr. ANTONIO VIO, Advocate, Fiume.

M. WIEGANDT, Manager of the *Norddeutscher Lloyd*, Bremen.

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National Associations

GERMANY

Deutscher Verein für Internationales Seerecht.

President : Dr. F. Sieveking, President of the High Hanseatic Court, Hamburg.
Secretary : Dr. Alf. Sieveking, Hamburg.

ENGLAND

Maritime Law Committee of the International Law Association.

President : Lord Alverstone, Lord Chief Justice of England, London.
Secretary : Dr. Ch. Stubbs, Advocate, London.

AUSTRIA

Association autrichienne de Droit Maritime.

President : His Exc. Kindinger, late Minister, President of the Court of Appeal, Trieste.
Secretaries : Dr. G. Martinolich, Advocate, Trieste.
Dr. E. Richetti, Advocate, Trieste.

BELGIUM

Association Belge pour l'Unification du Droit Maritime.

President : M. Beernaert, Minister of State, Brussels.
Vice-President : M. Charles Le Jeune, Underwriter & Average Adjuster, Antwerp.
Secretary : Louis Franck, Advocate, Antwerp.

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Danish Association of Maritime Law.

President : A. HINDENBURG, Advocate at the Supreme Court, Copenhagen.

UNITED-STATES

Maritime Law Association of the United States.

President : ROBERT D. BENEDICT, Advocate, New-York.
Secretary : LAWRENCE KNEELAND, New-York.

FRANCE

Association Française de Droit Maritime.

President : L. DE VALROGER, Advocate at the Council of State and at the Court of Cassation, Paris.
Secretary : F. C. AUTRAN, Advocate, Marseille.

NETHERLANDS

Comité de Droit Maritime des Pays-Bas.

President : E. N. RAHUSEN, Member of the Senate, Amsterdam.
Secretary : C. D. ASSER Jr., Advocate, Amsterdam.

HUNGARY

Association Hongroise de Droit Maritime International.

President : Comte ALBERT APPONYI, President of the Chamber of Deputies, Budapesth.
Manager : N. COLOMAN DE FEST, Councillor at the Ministry, Fiume.
Secretaries : Baron FRÉDERIC DE WIMMERSPERG, Secretary at the Ministry of Commerce of Hungary, Buda-Pest.
MARIUS SMOQUINA, Vice-Secretary of the Ministry delegated at the political Government, Fiume.

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Italian Association of Maritime Law.

President : M. MARGHIERI, Professor at the University of Naples.

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Japanese Association of Maritime Law.

President : Prince KONOYE, President of the High Chamber, Tokio.
Secretary : MATSUNAMI, Professor at the University, Tokio.

NORWAY

Norwegian Association of Maritime Law.

President : Dr. OSCAR PLATOU, Professor at the University, Christiania.

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Swedish Association for International Maritime Law.

President : E. DE GUNTHER, Director at the Ministry of Commerce, Stockholm.
Secretary : ELIEL LÖFGREN, Advocate, Stockholm.

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List of Attendants at the Liverpool Conference.

GREAT BRITAIN

MM. The Hon. JOHN LEA, Lord Mayor of Liverpool.

The Hon. Sir Wm. R. KENNEDY, Judge of the High Court, London.

Sir ALFRED JONES, K. C. M. G., President of the Incorporated Chamber of Commerce, Liverpool.

CHARLES Mc. ARTHUR, M. P. Liverpool.

R. B. D. ACLAND, K. C. (The General Council of the Bar, London).

JAMES D. BARKER, Average Adjuster, Liverpool.

W. BECKET HILL, Liverpool, (The London Chamber of Commerce).

KENNETH L. BILBROUGH, (The London Steamship Owners' Mutual Insurance Association Ltd, and British Shipowners' Mutual Protection and Indemnity Association, &c).

Dr. BISSCHOP, (The International Law Association, London).

AUBREY BROCKLEBANK, Vice-President of the Liverpool Steamship Owners Association.

JOHN CAMERON, Vice-President of the Incorporated Law Society of Liverpool.

T. G. CARVER. K. G. London.

ARNOLD J. CLEAVER, President of the Incorporated Law Society of Liverpool.

SAMUEL CROSS, of the Thames and Mersey Marine Insurance Co Liverpool.

F. C. DANSON, Average Adjuster, Liverpool.

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MM. STUART DEACON, Barrister at Law, Liverpool (The Liverpool Chamber of Commerce).

H. C. DOWDALL, Barrister-at-Law, Liverpool.

K. W. EMSLIE, Average Adjuster, London.

HERBERT FINCH, President Institute of London Underwriters.

J. ALDERSON FOOTE, K. G. (The General Council of the Bar, London).

COLONEL GOFFEY, J. P. Liverpool (The Liverpool Chamber of Commerce).

Wm. Gow, The Union Marine Insurance Co, Liverpool.

W. ENGLISH HARRISON, K. C. (Vice-President of the General Council of the Bar, London).

T. F. HARRISON, President of the Liverpool Steamship Owners' Association.

A. R. KENNEDY, London.

M. LEMON, Institute of London Underwriters.

WALTER LOWNDES. President, Liverpool Average Adjusters' Association.

R. G. MARSDON, (The International Law Association, London).

ALDERMAN M. H. MAXWELL, President of the American Chamber of Commerce. Liverpool.

H. RISCH MILLER, London, (The United Kingdom Mutual Steamship Owners' Association, London.)

J. STANLEY MITCALFE, (North of England Steamship Owners' Association).

DOUGLAS OWEN, Secretary Alliance Marine Assurance Company. London.

W. PICKFORD, K. C., Recorder of Liverpool, (The general Council of the Bar, London.)

P. L. ROOPER, Liverpool, (The United Kingdom Mutual Steamship Owners' Association, London.)

W. COOPER RUNDELL, Glasgow.

LESLIE SCOTT, Barrister-at-Low, Liverpool.

AUSTIN TAYLOR, M. P., The Liverpool Chamber of Commerce.

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MM. A. F. WARR, Liverpool.
F. S. WATTS. President of the Chamber of Shipping, London.

AUSTRIA.

Dr GIOVANNI MARTINOLICH, Advocate, Secretary of the Austrian Association of Maritime Law, Trieste.
CALLISTO COSULICH, Shipowner, Imperial Councillor, Trieste
ALBERT FRANKFURTER, Director of the Austrian Lloyd.
Sir GEORG HUTTEROT, Delegate, Austrian Association of Maritime Law.
Dr AUG. SCHENKER (Messrs. Schenker and Co.), Vienna.

BELGIUM.

AUG. BEERNAERT, Minister of State, President of the International Maritime Committee, Brussels.
CHARLES LE JEUNE, Vice-President of the International Maritime Committee, Anwerp.
LOUIS FRANCK,, Advocate, Hon. Secretary of the International Maritime Committee, Antwerp,
WALTER BLAESS. Assurance Director, Antwerp.
LEON HENNEBICQ, Professor at the « Université Nouvelle » Brussels,
MAURICE ORTMANS, Maritime Director of the « Société Cockerill », Antwerp.
LEON VAN PEBORGH, Average Adjuster, Member of the Municipality, Antwerp.
GEORGES POPLIMONT, Advocate, Antwerp.
EUGÈNE HOUBOTTE, Director at the Ministry of Foreign Affairs, Brussels.

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CHISTIAN HVIDT, Danish Association of Maritime Law, Copenhague.

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MM. René Verneaux, of the « Messageries » Maritimes Navigation Company, Hon. Secretary of the French Association, Paris.

C. Bultheel, Advocate, Dunkirk,

William Carr, Syndic des Courtiers Maritimes, Marseille.

G. Marais, Advocate of the Court of Appeal, Paris.

Benj. Morel-Spiers, Shipbroker, Judge at the Tribunal ot Commerce, Dunkirk.

GERMANY.

Mr. Justice Dr. Brandis, the Court of Appel, Hamburg.

Dr. Alfred Sieveking, Hon. Secretary of the German Association of Maritime Law, Hamburg.

Dr. Heinrich Finke, Barrister, Bremen.

Dr. Rösing, Director of the Chamber of Commerce, Bremen.

Dr. Alfred Albers, Secretary to the German delegation, Hamburg.

HUNGARY.

Louis Benyovits, Judge at the Royal Court of Fiume.

Dr. Nicolas Kral, Junr., Royal Notary at the Civil Court of Buda-Pest.

Marius Smoquina, Secretary of the Ministry at the Royal Government of Fiume.

Dr. Antonio Vio, Sr., Advocate, Fiume.

Dr. Antonio Vio, Junr., Fiume.

ITALY.

Dr. Francesco Berlingieri, Professor at the University, Advocate, Genoa.

Dr. Leone Ad. Senigallia, Advocate, Naples.

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JAPAN.

SUKETADA ITO, Commissary at the Supreme Tribunal of the Japanese Marine, Tokio.

NORWAY.

Professor Dr. OSCAR PLATOU, President of the Norwegian Association, Christiania.
Director ANTON POULSSON, Underwriter, Christiania.
Director OTTO THORESEN, Shipowner, Christiania.

SWEDEN.

E. DE GÜNTHER, President of the Swedish Association, Stockholm.
ELIEL LÖFGREN, Advocate, Hon. Secretary of the Swedish Association.

UNITED STATES.

The Hon. J. L. GRIFFITHS, United States Consul.

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INTERNATIONAL MARITIME COMMITTEE

Liverpool Conference 1905

AGENDA-PAPER

WEDNESDAY 14th JUNE

3 o'clock p. m. : Opening Sitting at the « Town Hall » Welcome by the Lord Mayor of Liverpool and the Reception Committee

Preliminary Proceedings.

From 4 to 6 o'clock p. m. : Reception by the Lord Mayor of Liverpool of the members of the Conference.

THURSDAY 15th JUNE

At 9.30 o'cl. a.m. : 1° *Collision at Sea and Salvage :* Report on the Diplomatic Conference at Brussels and on the labours of the International Maritime Committee; 2° Draft-treaty on *Limitation of Shipowners' Liability*. General Discussion on the draft-treaty submitted to the Conference ; 3° Discussion of the articles.

Afternoon 2.30 o'clock : Continuation of the discussion.

FRIDAY, 16th JUNE

Morning 9.32 o'cl.: Steps to be taken to give practical effect to resolutions as to Limitation of Shipowners' Liability.

Draft-treaty on *Maritime Martgages and Liens on Ships*. Discussion.

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Afternoon : Draft-treaty on *Maritime Mortgages* &c. : Further discussion.

Conflicts of law as to Freight.

SATURDAY, 17th JUNE

Morning 9.30 o'cl. : Conflicts of Law as to *Freight*,

Place of the next Conference.

Closing of the Conference.

Meeting of the Permanent Members of the International Maritime Committee.

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INTERNATIONAL MARITIME COMMITTEE

LIVERPOOL CONFERENCE

Draft Treaty on the Limitation of the Shipowner's Liability

Article I.

When the owner of a ship is held responsible according to the law of the country for the acts of the master and crew or for the engagements entered into by the master in virtue of his legal capacity, his liability is for each voyage limited :

a) To the ship or its value at the end of the voyage, at the option of the owner.

b) To the net freight for the voyage until its termination.

c) To the indemnities due to the owner for general average, collision or other damage suffered by the ship during the voyage, subject to deduction of the expenses incurred in putting the ship in a fit state to complete the voyage.

The right of the creditors does not include the claim of the owner against the insurer.

By net freight is meant the gross freight and passage money even if paid in advance, deduction being made of the charges which are proper to the same.

The voyage will be considered ended after final dischar-

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ge of the goods and passengers happening to be on board the ship and shown on the manifest at the moment when the obligation has arisen and in case of successive obligations after final discharge of the whole of the goods and passengers happening to be on board at the moment both of the one and of the other event.

If the ship carries neither goods nor passengers the voyage will be considered ended at the first port it puts into or at the particular port where it happens to be.

Article II.

If the owner elects for the abandonment of the ship and does not carry this into effect until some time after the end of the voyage, he is only freed up to the amount of the value of the ship at the moment of the abandonment and he remains bound for the difference between this value and that which the ship had at the end of the voyage.

Article III.

In the case provided for in article II and to provide for the case where the owner elects so far as concerns the ship, for the payement of its value at the end of the voyage, the valuation may at every time after the end of the voyage be judicially fixed by proceedings taken after due notice to the other side at the demand of the party who is the most diligent.

Article IV.

The owner has the right to substitute for the modes of obtaining freedom from liability provided in article I, payment of an indemnity limited for each voyage to £ 8. per ton of the gross tonnage of his ship.

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Article V.

If there exists a priority of lien upon the schip or upon the freight in favour of creditors in respects of whom limitation of liability is not admitted, the owner of the ship will be personally bound to make up in specie to the extent of the sums first collected by such creditors, the amount forming the limit of his liability.

Article VI.

The limitation of liability determined according to the preceding articles will be applicable to contracts concluded even by the owner of the ship so far as their execution lies within the legal duties of the master without his having cause to distinguish if the breach of these contracts is due to a member of the crew or not, the case of personal fault of the owner alone excepted. It applies also to damage caused to dykes, quays and other fixed objects as well as to the removal of wrecks. It is not admitted for the wages of master and crew.

Article VII.

When according to the laws applicable, the limitation of liability for damage to property is different from that for personal injury, the present treaty shall only have effect so far as concerns damage to property.

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Draft-treaty on Mortgages and Liens on Ships

ART. 1.

Mortgages and similar securities on ships, which are regularly established and published in each of the contracting States, will be respected in all other States and shall have there the same effect as in the country where they were constituted, subject to the provisions of the present treaty as regards Liens and maritime privileged rights.

ART. 2.

Mortgages on ships and other similar rights are overranked by maritime privileges and Liens.

ART. 3.

A privileged right on ships is given to :

1° Claims for judicial costs, taxes and public dues, custody and conservatory costs.

2° Indemnities due for salvage, pilotage and towage and for general average during the last voyage.

3° Wages of the master and crew, since the last mustering, but with a maximum of 12 months.

4° Claims for damages caused by collision.

5° Master's disbursments, money advanced to the master for the necessaries of the vessel during the last voyage ; loans on bottomry ; indemnities for damages to and short-deliveries of cargo; claims for repairs, furnitures, supplies, outfitting to the ship, but only in so far as these claims arise and are enforced at the port where the vessel lies,

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or in the ports of the same country where she calls during the same voyage.

ART. 4.

The privilege granted by the preceding article only exists when the debt in question is justified in the form prescribed either by the law of the country where it arose, or by the national law of the ship, and satisfies to the conditions to which the privilege is subjected by either the one or the other of these laws.

ART. 5.

In case the privilege is notrestricted to claims arisen during the last voyage, the order of the liens will be inverse to that of the dates of the voyages.

For the same voyage, the privileges will rank amongst them in the order of the enumeration in article 3. Those claims which are classed under the same number in that article will have equal rights.

ART. 6.

The privileged character of all claims is subject to prescription after one year.

The national laws regulate the effect of the transfer of property in ships on privileged claims and mortgages.

* * *

The Amsterdam Conference had expressed their wish to have a Sub-Committee nominated by the Permanent Council, which Commission should have to draw up a draft-treaty on Mortgages and Liens on Ships. The Permanent Council has nominated the following gentlemen :

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R. B. D. ACLAND, Esq. K. C., London.
C. D. ASSER Jr., Esq., Amsterdam.
FR. BERLINGIERI, Esq., Genua.
T. G. CARVER, Esq. K. C., London.
LOUIS FRANCK, Esq., Antwerp.
HENRI FROMAGEOT, Esq., Paris.
LEON HENNEBICQ, Esq., Brussels.
CHARLES LYON-CAEN, Esq., Paris.
Prof. Dr. A. MARGHIERI, Esq., Naples.
GEORGE G. PHILLIMORE, Esq., London.
ALFRED SIEVEKING, Esq., Hamburg.
ANTONIO VIO, Esq., Fiume.

Owing to various circumstances the Sub-Committee could not meet; the above draft has then been submitted by letter to the different members, and it has given raise to some remarks, the most important of which will doubtless be repeated at the Conference.

According to the general views expressed at Amsterdam, *Article I* establishes as at principle that mortgages and similar rights, if they are constituted and published according to the provisions of the national laws, will be respected in all other contracting States and will have in those countries the same effect as in the land of their origin. Therefore, all questions relating to the constitution and publicity of the mortgages are left out of the international treaty. This latter will be concluded only with such States as have a sufficien system of publicity ; but all details remain under the national legislations.

To adopt another system would mean to create an international mortgage-system which would involve much complications ; and this should have been practically without great use, for the real difficulties of the question arise as to the extent of the mortgage and as to the liens. As

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regards the extent of the mortgages, the proposed draft gives a very simple solution : the mortgage will have everywhere the same extent as in the country where it was contracted ; f. i. if in this latter country it includes freight, it will have everywhere the same effect.

Concerning the publicity, it was proposed to make it an international rule that the mortgage should be mentioned on the deed of ownership of the vessel. The Conference shall have to decide whether this view should be adopted.

Article 2 did not give raise to any remark. It makes an international rule of the principle according to which the Liens, granted on account of reasons of general interest, overrank mortgages, which latter are based solely on the free will of the parties.

Article 3 establishes 5 classes of Liens. In this classification, due notice was taken of the nature of the claims, and of the English rule according to which claims should be privileged in the inverse order of their dates. This last method is adopted for the classification of the claims arising during successive voyages ; those last in date will rank first.

We can briefly summarize as follows the 5 classes of privileged rights on ships as established by article 3.

In the first place rank the claims for judicial costs, taxes and public dues, custody and conservatory costs. This rank and privilege speak sufficiently for themselves.

Secondly, indemnities for salvage, pilotage and towage, and general Average, during the last voyage.

The privilege granted to the claim for towage has been criticized, though it is admitted in several legislations. The Conference shall have to decide.

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The other claims mentioned under this item, viz salvage, pilotage and general Average, seem to deserve in all respects the rank granted to them.

In the third place, there are the wages of master and crew. Although these claims deserve much sympathy, it seems reasonable to prevent the accumulation of old debts of that kind; for this reason the privilege has been restricted to the claims having arisen since the last mustering, that means during the time elapsed since the closing of the last muster-roll, and with a maximum of one year.

In the fourth place the claim for damages arising out of collision. It was observed that in English law, this privilege extends much farther and includes not only the collision between two ships, but also all damages caused by fault to third parties.

This extension can be adopted, as well as it may be contended that privileges ought to be restricted as much as possible and that it will be enough to provide in an international arrangement for such cases as are the more frequent.

One of the members proposed that the claim for Collision should rank after that for Bottomry and for damages to the cargo. But this was not the view of the majority of the Commission. It seems certain that the creditor who has voluntarily contracted with the captain, cannot have a right prior to that of a person who, against his will, has become the victim of a collision. Besides, in such matters of international interest, it is necessary to show conciliating dispositions : an agreement on a draft-treaty is quite out of question if it absolutely sets aside that which is an Anglo-American rule on so important a point.

On the 5° of article 3, criticisms have been expressed as to the reserve contained in the draft for repairs, furnitures and supplies. It seems however that, when giving a privi-

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lege to creditors of that description, which remains occult, and must therefore be unknown to a mortgage or to other persons giving credit to the vessel, it may be required as a condition, that those creditors enforce their rights with due diligence. If without being paid or obtaining a sufficient guarantee, they suffer the vessel to depart, they are acting in contradiction with what is customary, and they can really have no reason to complain if they have only the rights of ordinary creditors, This is another point on which the Conference shall have to decide.

In article 4, it is provided that questions relating to formalities and proof shall beleft to the national laws. The contracting States must, as to that, give credit to their respective legislations. Once this principle admitted, the mode of verifying is an easy one. But, in order to give still more facilities, this article provides that it will be sufficient to justify the claim, either according to the law of the State where it originated, or according to the national law of the vessel.

Article 5 attemps a settlement of the difficult question of the rank of privileged rights amongst themselves and adopts the two following rules : In the same voyage, the rank is regulated according to article 3. Those claims which are classed in that article under the same number, will have an equal rank. It is however proposed that exception should be made for bottomry liens and that for same the rule of the inverse order of the dates should apply.

If there were several voyages, the rank shall be in the inverse order of the date of the voyages, according to a principle which is often followed in English law.

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Article 6 provides a special prescription for the privileged character of a claim. For the sake of maritime credit the number and duration of privileged rights should not be excessive. It should not be forgotten that several of the creditors in question have no preferencial right whatever in common law. If in maritime law such a favour is granted to them, it is but justice that they use due diligence for the protection of their rights. Besides, the claim is not lost if the time of prescription is once reached ; it becomes only an ordinary claim, without privilege.

Then, there remained to regulate the effect on privileges of tranfer of property in ships. This also is referred to the national legislations.

The object of the draft-treaty submitted to the Conference under reserve of later modifications, is to be a basis for discussion and according to the wishes expressed by the Amsterdam meeting, it aims at restricting international interference in these matters as strictly as possible.

A very interesting digest on English law has been prepared by Mr Georges G. Phillimore; it will be distributed before the date of the Liverpool meeting.

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Conflicts of Law as to Freight

Questionnaire on Freight

A. — On which points should conflicts of Law as to Freight be settled internationally?

B. — What are, in each case, the best solutions to be recommended?

Especially :

1. — **Freight pro rata itineris.**

Is any freight due when the vessel is lost during the voyage but the cargo saved wholly or partly? In what proportion, and on which basis?

2. — **Of Freight, in case the cargo is sold.**

Is any freight due for the goods sold during the voyage

1. for the needs of the vessel,
2. in consequence of their damaged state
   a) if owing to a « vice propre »
   b) if owing to accident (fortune de mer).

In what proportions and on which basis?

3. — **Of the Freight in case the vessel is declared unseaworthy.**

Is any freight due when the vessel is declared unseaworthy at the port of refuge or cannot complete the voyage, but when the cargo is reforwarded by another vessel and reaches its destination? On what basis and in what proportions?

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4. — **Question of half-freight and Dead-freight**

In the case where the charterer cancels the voyage before loading, or loads only part of the engaged cargo, — shall the indemnity due (half-freight or dead-freight) be fixed legislatively, or should the question be referred to common law as to damages ?

5. — **Delay in loading or discharging.**

Shall demurrage be considered as an additional freight, or as an indemnity ?

Will the debition of same be subordinated to a written protest, at least by correspondence ?

Notice

The Maritime Law Committee of the Netherlands expressed their desire to have the questions of Conflicts of Law as to Freight added on the agenda-paper of the Liverpool meeting.

Few questions are more complicated. It may be even contended that as this is a matter depending chiefly on the contracts between parties, it must be left to them, either to agree expressly or tacitly as to which law will rule their contract, or to deal plainly with the difficulties arising from the divergency of the legislations. It must however be recognised that several sorts of difficulties are arising so often, that it seems advisable to establish uniform principles of law, at least for the most important of such difficulties.

The questionnaire formulated above puts in the first place the question of general importance : on what basis should conflicts of law as to this matter be settled. Then, it is asked what are the best solutions in each of the cases,

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which should be proposed as objects of an international agreement.

In order to fix the ideas, 5 classes of conflicts are indicated.

1. — **Loss of the vessel.** — First the question whether any freight is due when the vessel is lost during the voyage, the cargo, or part of it, being preserved. Should it then be admitted that the conveyance of the goods to the place they have reached has procured to their owner a benefit in consideration of which he owes payment of a proportional freight? What will be a basis for this proportion? Will it be the real advantage to be estimated in each case, or will it be merely in proportion with the distance the goods have in fact been carried? If this solution is not adopted, should it on the contrary be decided that the contract of carriage is indivisible and that in such a case, no freight is due at all?

2. — **Unseaworthiness of the vessel.** — A similar question arises where a vessel, after having carried its cargo to a port of refuge, is declared unseaworthy. Is then a proportional freight due or not, and if the cargo reaches its destination by another vessel, how shall the difference in freight, — more or less, — be settled? The legislations, as well as the decisions of Courts and tribunals differ rather widely as to that.

3. — **Sale of the cargo.** — In other instances, the vessel may arrive at destination, but it may have been necessary to sell the cargo during the voyage. This measure may have been taken for the needs of the ship; or it may have become necessary as the cargo could not be carried to destination owing to a « vice propre »; or the cargo may have been damaged in consequence of a sea-

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accident and its sale may be necessary in order to prevent that it should arrive spoiled at destination. What will become of the freight in these different cases ? This is the 3rd question.

4. — **Half freight and dead-freight.** — Some legislations allow the charterer to cancel the voyage before anything is loaded, by paying an indemnity equal to half the freight. Other legislations, on the contrary, merely apply the common law rules and leave it to the judges to decide what will be due to the owner in such cases. — What is the system to be preferred ?

A similar question arises where the charterer instead of refusing to load, only embarks part of the cargo engaged. It is generally admitted that in such a case, the charterer owes the dead-freight, paying the empty space as full ; but even on this the legislations are not unanimous. This is the 4th question.

Must this question be settled by way of international convention ; or will it be enough to refer to the contracts between parties and to the existing legislations ?

5. — **Delay in delivery and in discharging.** — Few matters give raise to more litigation than questions of demurrage. It does not seem possible to settle them internationally. They are very complicated and too much depends on the particular contracts concluded in each case. But some legislations provide that the indemnity for demurrage is only due when a protest which may be made by letter, and must, in other cases, in the form of a regular protest, has been made ; but either in one form or another, it is a formality the neglect of which is a bar to the claim. In matters of international character, these formalities are often unknown to the foreign captain ; he

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therefore does not comply with these formalities and so loses his owner's rights. In other cases, the captain has regularly acted according to the law of the place where his vessel was lying, but then the hazards of navigation or of procedure cause the matter to be pleaded in another country where the absence of protest is opposed to him with success. This is an actual evil; the Conference will have to examine whether it is sufficiently great that it should need an international settlement? In the affirmative, it shall be necessary to indicate the uniform solution to be adopted.

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INTERNATIONAL MARITIME COMMITTEE

CONFERENCE OF LIVERPOOL

(JUNE, 1905)

Note on the international draft-treaty on Limitation of Shipowners' Liability, and on the previous work of the Committee on this matter.

The question of Limitation of Shipowners' Liability has been several times an object of the labours of the Conference. Comparative studies of the various legislations have been published in very complete reports. The drafts proposed by several commissions, the discussions and the votes of the conferences of London, Paris, Hamburg and Amsterdam, form a very compact series of preparatory documents which it will not be useless to briefly summarize.

All legislations limit more or less this liability (1).

Two principal systems are in opposition : that of Great-Britain and that of the continental legislations and of those of America, with some variations between these latter. — The first proclaims the personal liability of the shipowner, but limits same at a legal maximum for each accident, which maximum is £8 per ton for damage to property and £15 per ton for personal injuries with or without damage to property.

The second system reduces the liability to the interests involved, viz to the ship and freight. This is the right of abandonment of most of the legislations of the Continent and of Soutern-

(1) With the exception of that of Nicaragua, as it seems. *Cattier*, p. 35.

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America, or the limitation *in rem* of the German and Scandinavian codes with which that of the United-States has a great similitude.

Consequently the English shipowner may lose in a collision his ship together with the approximate value of same (£8 or even £15 per ton). The continental or American shipowner never risks more than his ship, (even when this latter is in fault and if there remains but a more wreck of it), plus the freight. The English shipowners therefore are burdened with a liability much heavier than that falling on the shipowners of the remainder of the world.

After the prelimenary remarks exchanged at the Antwerp conference in 1898, where it appeared how difficult is unification in this matter, the London Conference adopted a mitigating system, leaving to the shipowner the choice between these two systems. This was the text of this decision :

« *This Conference recommends for universal legislative adoption the* » *following rule : in cases of loss of or damage to property arising from* » *improper navigation, whether such property be afloat or ashore, the* » *shipowner shall be permitted at his option to discharge his liability* » *either by abandoning ship and freight, or by paying a sum of money* » *calculated upon the tonnage of the ship.*

» *This Conference, having regard to the resolution passed here and at* » *Antwerp, records its sense of the great inconvenience and frequent* » *injustice resulting from the diversity of the maritime laws of the nations* » *regarding the consequences of collisions at sea and the responsability of* » *shipowners in relation thereto ; and it heartily supports the suggestion* » *of the Chambers of Shipping of the United Kingdom to the effect that* » *her Majesty's Government be invited to institute a full inquiry into the* » *whole subject, and recommends all its members to bring the matter to the* » *attention of their respective Governments* ».

Practically this system makes the right of abandoning ship and freight general rule and assures the benefit of same to the English shipowners ; it respects at the same time the situation acquired in England by the high valued vessels and places these

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vessels in foreign countries on the same footing; in other words it is the American and continental system with a fixed maximum per ton.

The Paris Conference in 1900 has extended the application of the London principle in the following terms:

« *The resolution adopted by the London Conference on the matter of* » *Limitation of Shipowners' liability applies to :*

» *1° Damage done to dykes, quays and similar fixed objects.*

» *2° Contracts passed by the Shipowner, provided their execution forms* » *part of the captain's ordinary functions, whether the breach of such* » *contracts is due to a member of the crew or to any other agent, the per-* » *sonal fault of the owner always excepted.*

» *3° There should be no limitation of liability for wages of officers and* » *crew* ».

In Hamburg (1902) it has been decided :

« *The Conference* reaffirms *the resolutions carried at the London and* » *Paris Conferences in respect of limitation of shipowners' liability ;*

» entrusts *a committee, to be appointed by the Council, with the duty* » *of giving effect to this resolution in the form of a draft treaty* ».

In execution of this decision the draft treaty, (which is already distributed,) has been submitted to the Amsterdam conference. At this latter meeting, and on the proposal of Mr Mc Arthur remarking that the question was not yet ripe in England, the following decision has been voted :

» *This Conference, confirming the resolution voted in London, appro-* » *ves of the Draft as on first reading and reserves to next Conferance the* » *settlement of questions of detail and drafting* ».

The object of the present note is to facilitate this study. We mention briefly after each of the provisions of the treaty: what is the state of the various legislations and what criticisms and amendments were uttered until now on the draft. For questions

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of details we refer to the reports published formerly by the International Maritime committee.

Ccnventional Abreviations

Cattier p. *Étude de Droit comparé sur la Responsabilité des propriétaires de navire, par M. F. Cattier, avocat. Bulletin nº 3 de la Conférence d'Anvers, août 1898, p. ...*

B. nº 11, *p.* *Bulletin du Comité Maritime International nº* 11. *Amsterdam Conference-Report, p.*

de V. p. *Report on the Draft-treaty by M. L. De Valroger. B. nº* 11, *p. ...*

Jacobs, nº. *Jacobs, Le Droit Maritime Belge, nº ...*

ARTICLE 1

When the owner of a ship is held responsible according to the law of the country for the acts of the master and crew.....

Present legislations.

All legislations admit limitation of liability as to these facts the Portuguese legislation alone excepted.

Cattier p. 37 and 57.

.... or for the engagements entered into by the master in virtue of his legal capacity.....

Present legislations.

Conform : Germany art. 452, Danemark, Sweden, Norway, art. 8; Begium 7; France 215; Italy 491; Rumania 501; Venezuela 493; Chili 879-882; Guatemala 757 and 760; Honduras 876-897; Portugal 492, 2º § 1; San Salvador 803; Domican Republic 216; Egypt 30; Turkey 30; United-States America,

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June 29, 1884, art. 18 ; Greece 216 ; Haïti 213 ; Netherlands 321 ; Germany 486 ; Sweden 222 ; Argentina 880 ; Monaco 179. However a great number of legislations except expressly from limitation of liability the claim of the members of the crew for their wages.

Do not admit this limitation : Great-Britain, Spain 586-587 ; Costa-Rica 578, Peru 589-590, Brazil 494, Mexico 671-2.

Cattier p. 58 *and* 59.

We may point out that the German (art. 486 2°) and Scandinavian codes limit the shipowners' liability even when the action is based on non-execution of a contract made by the shipowner himself, when its execution lies within the legal attributions of the master.

Remarks, Criticisms and amendements.

UNITED-STATES. — It should be added that the loss or damage must have been caused without coopération or cognizance of the shipowner.

B. n° 11, p. 111.

ITALY. — According to this Association the wording is not sufficiently absolute and should be sharper. By alluding to the national legislations, they fear to limit the meaning of the resolution which according to the conferences, wish should be adopted by all the States without any regard as to the present condition of their respective laws. — The Association propose to replace the words *Propriétaire de navire* by *Armateur,* according to the German law which uses that term and to several other extending expressly the limitation to the *armateur* even when he is not the real owner.

She asks to provide that the captain who is owner or copropriétor of the ship should not have the benefit of the limitation.

..... his liability is for each voyage limited :

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Present legislations.

In this way must apply the Belgian and French legislations and as it appears all these who admit abandonment. The shipowner is bound to give up the vessel in the same state in which it was at the end of the voyage, wathever may have been the events since occurred.

(Jacobs N° 71 ; Court of Cassation of Belgium June 1904. See however Autran Code de l'Abordage ; N° 605 : Dalloz V. Droit Marit. 328, Pas. 1904 p. 265).

Also in the German system the respective rights of the ship's creditors are settled per voyage, and if the owner after having been informed of the claim of a creditor towards whom he is only liable on the ship and freight, sends the vessel out for a new voyage without this being required in the interest of that creditor he becomes personally liable for the loss thereby suffered by the creditor (art. 774).

In English law, on the contrary the liability is limited to a total amount of £ 8 or £ 15 per ton, for each case, and this indemnity is due even if the ship was lost in the accident or in consequence of it.

Cattier 27, 3.

..... is limited :

a) To the ship or its value at the end of the voyage, at the option of the owner.

b) To the net freight for the voyage until its termination.

c) To the indemnities due to the owner for general average, collision or other damage suffered by the ship during the voyage, subject to deduction of the expenses incurred in putting the ship in a fit state to complete the voyage.

Present legislations.

No legislation leaves the shipowner to chose as does the draft treaty sub A.

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The English law limits the liability to the value of the ship this latter being uniformly fixed to the £ 8, £ 15 per ton for each case.

The other legislations with their respective variations limit liability to ship and freight, which practically means the actual value of the ship and the freight at the end of the voyage. As regards freight the wording is much variable. Some say merely freight (Belgium 7 ; Egypt 30 ; Dominican Republic 216 ; France 216 ; Greece 21 ; Haiti 21 ; Monaco 179 ; Venezuela 493 ; Turkey 30). In a greater number of countries the wording: the freight received or to be received for the voyage to which relates the acts of the captain. (Argentine 830 ; Brazil 494 ; Chili 879 ; Costa-Rica 568 ; Spain 587 ; Guatemala 757 ; Holland 321 ; Honduras 876 ; Mexico 672 ; Portugal 492 ; San Salvador 800 ; art. 756 of the German code says « .....the freight or the voyage in relation to which the claim has arisen » In France it is the freight running at the time of abandonment (de V. p. 62). In Italy 491 and in Rumania 501, the owner must abandon the freight received and to be received. In some legislations it is stipulated expressly that the shipowner must abandon the ship with its accessories. Argentine 880 ; Costa-Rica 568 ; Spain 587 ; Mexico 672.

Cattier, p. 6.

In Belgium by freight is meant net freight *(Jacobs, N° 52)*. In France it seems to be the gross freight, (de V. p. 64). In Germany it is the gross freight (art. 756) and the same opinion has prevailed in the preparatory works of the Scandinavian codes *(B. n° 11 p. 65)*.

Art. 775 of the German code attributes also to the creditors of the ship the indemnities due to same.

Remarks Criticisms and Amendments.

BELGIUM. — In the *c)* should be included the indemnity for assistance *(B. n° 11 p. 15)*. A member proposed to replace the word « under deduction » by « under deduction of all expences burdening these indemnities » *(idem p. 17)*.

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FRANCE. — See infra p. 20 art. 2 of the draft treaty of the French Association 1° and 2°. It proposes also to add to § *c)* the indemnity for assistance or salvage.

ITALY. — The association makes the same proposal for the indemnity of assistance.

HUNGARY. — It should be added : « under deduction of the expences incurred in putting the ship in a fit state to complete the voyage in case of particular average ».

UNITED-STATES. — The clause inserted at the end of the subdivision *c* of art. 1 « under deduction of the expences incurred in putting the ship in a fit state to complete the voyage » should be rendered applicable to the value of the ship at the end of the voyage (subdivision *a* as well as to the indemnity mentioned sub littera *c*.)

B. n° 11, *p.* 111.

NETHERLANDS. — As regards *c)* the Maritime Committee remarks : « what the ship receives for general average is nearly always but a partly reimbursment of expences already made ; and this will be really the case also for the damages named last. If the sums received and paid out balance in this way, there will not be much left to cover the liability ».

B. n° 11, *p.* 120.

On the question of the valuation of the ship and on that of the time charter, see the speach of Mr. Loder at the Amsterdam conference.

B. n° 11, *p.* 374.

NORWAY.— The Association propose to add after the words « net freight : for the goods or passengers being on board at the time when the obligation has arrisen, for the voyage until its termination.

The Association points out what may occur in case of time-charter.

B. n° 11, *p.* 124-5.

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JAPAN. — The Association propose to strike in § *b*) he word « net ».

B. n° 11, *p.* 163.

See also hereafter, p. 25.

« The right of the creditors does not include the claim of the owner against the insurer ».

Present legislations.

The codes of Argentina 880; Belgium 7; Chili 880; Guatemala 758; Holland 321; Honduras 877; San Salvador 801; exclude strictly from abandonment the regress against the insurers.

Cattier, p. 61.

The other legislations seem to exclude it implicitly.

In the English system there can be, of course, no question of it.

By net freight is meant the gross freight and passage money even if paid in advance, deduction being made of the charges which are proper to the same.

Present legislations.

See above, p. 22.

Remarks criticisms and amendments.

GERMANY. There is no objection to admit net freight, the German law being rather isolated in providing the contrary.

By net freight the Bremen Commission would mean: « the gross freight and passage money for the goods and passengers happening to be on board at the moment when the obligation arises, under deduction of the expences necessary to earn the freight which the shipowner would have spared if at that moment (when the obligation arose) the ship had been lost. »

B. n° *11, p. 12.*

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AUSTRIA. — It should be expressed clearly that the shipowner is liable on the whole net freight, even then when part of this freight was paid in advance.

B. nº 11, p. 161.

JAPAN. — The Association propose to modify the provision as follows: By freight is meant the gross freight and the passage money even when it is paid in advance.

B. nº 11, p. 163.

The voyage will be considered ended after final discharge of the goods and passengers happening to be on board the ship and shown on the manifest at the moment when the obligation has arisen and in case of successive obligations after final discharge of the whole of the goods and passengers happening to be on board at the moment both of the one and of the other event.

If the ship carries neither goods nor passengers the voyage will be considered ended at the first port it puts into or at the particular porth where it happens to be.

Present legislations.

GERMANY. — Must be considered as a voyage that for which the ship has been equipped anew or which is undertaken in virtue of a new contract of affreightment or after complete discharge of the cargo (art. 57).

Most of the legislations give no definition of the voyage.

Remarks, Criticisms and Amendments.

FRANCE. — The wording is not clear. Would it not be better to decide simply that the total discharge taking only place in the last port, there is, in reality, but one single voyage, and in consequence, a single freight, affected to two successive obligations?

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Article 2.

If the owner elects for the abandonment of the ship and does not carry this into effect until some time after the end of the voyage, he is only freed up to the amount of the value of the ship at the moment of the abandonment and he remains bound for the difference between this value and that which the ship had at the end of the voyage.

Present Legislations.

See above, p. 21.

Remarks, Criticims and Amendments.

BELGIUM. — The commission propose to word art. 2 as follows :

« If the owner opts for abandonment of the ship and does not carry it into effect until some time after the end of the voyage, he is freed only provided he makes up in specie the diminution of value which may have affected the ship since the end of the voyage till the time of abandonment.

B. n° 11, p. 15.

UNITED STATES. — To art. 2 should be added : « and for the freight and indemnities as provided in art. 1. »

B. n° 11, p. 112.

NETHERLANDS. — The Committee are of opinion that it should be clearly settled in what manner is to be effected abandonment by an actual dispossession, so that the enforcement of the claims by the creditors would meet no practical difficulties.

B. n° 11, p. 119.

NORWAY. — The Association understand this article thus : that abandonment shall have to be declared within a reasonable delay, and that the Tribunal shall have to decide, according to circumstances, whether more than a reasonable delay has elapsed.

B. n° 11, p. 126.

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AUSTRIA. — Art. 2 begins speaking of option of abandonment, without it having previously been indicated when, and under what form the owner has the right to effect this abandonment. It were better to indicate in a new article, to insert between art. 1 and art. 2, the basis of this right of abandonment and the manner in which it might be effected.

B. nº 11, p. 161.

ARTICLE 3.

In the case provided for in article 2 and to provide for the case where the owner elects so far as concerns the ship, for the payement of its value at the end of the voyage, the valuation may at every time after the end of the voyage be judicially fixed by proceedings taken after due notice to the other side at the demand of the party who is the most diligent.

Present legislations.

This provision is a new one for all legislations.

Remarks, Criticims and Amendments.

GERMANY. — Would it not be advisable that the shipowner who delayes his decision as regards this option, should be compelled to deposit securities ?

B. nº 11, p. 12. par. 5.

BELGIUM. — The Commission propose :

1º to suppress in art. 3 the words « at every time », in order that parties should act without delay, and in order to leave it to the Courts to decide whether the action is brought in due time.

2º to render more precise the first part of the article in order to make very clear the two possibilities provided for. The article would be worded as follows :

« In prevision, as well of the case provided for in art. 2 as of the case when the owner.... »

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Another modification has been proposed, namely to insert in the treaty, in art. 2, a provision stating who should have to prove that the sum offered in lieu of the ship, would be the equivalent of the value of same at the end of the voyage.

The Commission has thought it better to leave questions of such kind to the common law principles of each State.

B. n° 11, p. 161.

UNITED STATES. — The Association wish to render more precise the meaning of the words « at every time », « party who is the most diligent » and « other party ».

B. n° 11, p. 112.

NETHERLANDS. — The Committee would like to see this value fixed in a clearly prescribed manner, with obligatory deposit of the sum before the departure of the ship.

B. n° 11, p. 119.

ARTICLE 4.

The owner has the right to substitute for the modes of obtaining freedom from liability provided in art. 1, payment of an indemnity limited for each voyage to £ 8. per ton of the gross tonnage of his ship.

Present legislations.

As intimated above, this limitation exists in no other legislation than that of England. In English law it is alone to be found. In case of personal injuries, the indemnity may amount to £ 15 per ton. Art. 503, 11, 2, a of the British code provides as to that : The tonnage will be, for the ship, the gross tonnage, under deduction of the engines ; for the sailing vessels, the registered tonnage. However, it will not include the space occupied by the seamen.

Cattier, p. 27.

Remarks, Criticisms and Amendments.

FRANCE. — How shall the action of the creditors be conducted previously to the option of the owner ? Will they onley

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be admitted to bring an action *in rem* on the ship and the freight, according to the German system, or will they have, as a principle, according to the French system, an action *in personam* against the owner, this latter having however the faculty to effect abandonment or to pay a fixed sum ? The wording of the treaty wants more precision as to this. How shall abandonment be effected ?

These questions are perhaps to be left over to the various national legislations (de V, p. 57, nº 4).

ITALY. — The Association propose to adopt art. 492 et 493 of the Italian Code for the regulation of the right of option (1).

Article 5.

If there exists a priority of lien upon the ship or upon the freight in favour of creditors in respect of whom limitation of liability is not admitted, the owner of the ship will be personally bound to make up in specie to the extent of the sums first collected by such creditors, the amount forming the limit of his liability.

Present legislations

In English law, this provision would, of course, have no application. In the countries where the system of abandoment « proprement dit » is applied, it is not expressly formulated by the law, but the doctrine admits same generally as an implicit consequence of the abandonment, namely in France and in Belgium. (*Jacobs nº* 71).

(1) We have not repeated here some remarks on the principle of option itself, as this principle has been decided on at London and was confirmed at Hambourg as well as at Paris.

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The German Code provides, in art. 776 : In case of creditors of the ship acting to enforce their rights of lien in competition with other creditors (« créanciers gagistes ») or other creditors whatever, the ships creditors will have a right of preference.

Remarks, Criticims and Amendments.

GERMANY. — The idea which inspired this article was not a very fortunate ; however, this provision increases the securities of the ships creditors, and seems practical and reasonable.
B. n° 11 p. 10 in fine.

NETHERLANDS. — The Committee remarked that the draft does not say where, when and how the shipowner shall make up in specie. *B. n° 11, p. 120.*

Article 6.

The limitation of liability determined according to the preceding articles will be applicable to contracts concluded even by the owner of the ship so far as their execution lies within the legal duties of the master without his having cause to distinguish if the breach of these contracts is due to a member of the crew or not, the case of personal fault of the owner alone exepted.

This provision was voted at the Paris Conference in 1900.

Present législations.

Conform : Germany, art. 486, 2. Danmark, Norway, Sweden, art. 222, A. L. 3. — The others do not admit this rule.

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Remarks, Criticisms and Amendments.

GERMANY. — It is more practical to leave away this extension of the principle, though it be logical, but it is in opposition with several important legislations.
B. n° 11, *p.* 8, *par.* 2.

FRANCE. — Would it not be well to extend this provision to all persons who, although not belonging to the crew, execute works in the service of the ship, which includes the pilot ?

In France, according to the Jurisprudence, the owner is responsible for the pilot, even when compulsory. In England, to the contrary, the owner is not liable for the fault of a compulsory pilot. The same is the case in the German Code (art. 738).

Then there arises the question whether it would not be advisable to extend the limitation of liability to the occult vices of the ship ? (de V. p. 56, 11). The French Association propose to add that the limitation should extend to occult vices if all diligence has been made in order to have the vessel in a good state of seaworthiness in all respects. (Draft of the French Association. Art. 1, 3°, infra, page 35).

ITALY. — The Association make reserves as to this article which is so new for several legislations, and against which they fear too much difficulties.
B. n° 11, *p.* 132 *in fine.*

They ask a formule more clear and complete « on the point relating to the acts of persons who do not belong to the crew. (*Id. p.* 135).

AUSTRIA. — It should be explained more clearly that these rules apply also to the liability ex contractu of the shipowner.
B. n° 11, *p.* 161.

GREAT-BRITAIN. — Mr. Mc Arthur, in his speech at the Conference of Amsterdam, pointed specially out that this

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provision is likely to render impossible the adoption of the draft-treaty in England.

B. n° 11, *p.* 382.

It applies also to damage caused to dykes, quays and other fixed objects as wel as to the removal of wrecks.

This provision was also voted at the Paris Conference.

Present legislations.

Conform : Germany, Scandinavian States, Belgium (implicitly; Jacobs, n° 5) France, (Law of August 12th, 1887). Great-Britain (Bill. of 1900) and implicitly most of the other legislations.

Controversed : United-States. *B. n°* 11, *p.* 113.

Remarks, Criticisms and Amendments.

UNITED STATES. — The Association considers that this point is without relation to Maritime Legislation, and would be contrary to the Statute Law of the United States.

B. n° 11, *p.* 113

ITALY. — The Association would have art. 6 placed immediately after art. 1.

B. n° 11, *p.* 134 *in fine.*

It is not admitted for wages of master and crew.

Present legislations.

Conform : Germany (art. 487); United States (Law 19 June 1884, art. 18); Italy (art. 491); Portugal (art. 492, § 1); Sweden (art. 222 in fine); Great-Britain (the limitation does not exist for contracts).

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In Belgium the liability of the owner, even for the crew's wages, is limited by the faculty of abandonment when the engagement was made by the master.

Jacobs, 291.

ARTICLE 7.

When according to the laws applicable, the limitation of liability for damage to property is different from that for personal injury, the present treaty shall only have effect so far as concerns damage to property.

Present legislations.

The English law alone makes a distinction between damages to property and personal injuries.

Remarks, Criticisms and Amendments.

FRANCE. — Why should thus a difference of legislation be admitted in case of personal injuries? In a draft of revision of Book II of the Code of Commerce, submitted presently to the French Association. Mr. Delarue, advocate at the Court of Paris, member of the Association, proposes that in case of abandonment in consequence of a collision or other accident which involved death of or injury to, persons, the owner be always compelled to add to the value of the property abandoned a sum sufficient to make up a capital of 125 francs per gross ton register, which capital should be affected to satisfy to judgments given on behalf of victims or their heirs.

This proposal, which represents a mixture of the English system with the Continental law, deserves to attract notice.

de V. p. 68, XVI.

The French Association express their wish that, in case of death of or injuries to, persons, caused by faults which involve the ships' liability, the owner have to respond for a special additional liability towards the victims (for instance of £ 7 per ton gross register).

Infra p. 35.

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NETHERLANDS. — The words « the legislations applicable » are not clear.

B. n° 11, p. 117.

The fact of this treaty not being applicable to personal injuries, is a further cause of multiplicating divergencies, which is regrettable.

Id. p. 118.

THE WHOLE DRAFT-TREATY

Remarks, Criticisms and Amendements

NETHERLANDS

The draft-treaty is unseparable from the Rules of Jurisdiction.

B. n° 11 p. in fine.

FRANCE

DRAFT-TREATY ON SHIPOWNERS' LIABILITY
BY THE FRENCH ASSOCIATION

ART. 1. — The shipowner is not personally liable, but only with his ship and her accessories relating to the voyage :

1° for the acts of the captain, of the crew, or of any other person assisting the captain in the service of the ship ;

2° for the execution of the contracts within the legal attributions of the captain and passed, either by himself or in his name by any other person, even by the owner of the ship ;

3° for the state of the ship, as to latent defaults, when all care has been taken to keep the ship in a seaworthy state in every respect ;

ART. 2. — In the application of the preceding provision, the accessories of the ship include :

1° The gross amount of freight and of the passage money, even if paid in advance, under deduction however of the expenses relating to the carriage of the goods (relatives à l'expédition) ;

2° The amounts due or paid for contribution to general average, for assistance- or salvage-indemnity, or for repairing any damages.

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The indemnities due or paid in virtue of insurance-contracts are not considered as accessories of the ship ;

ART. 3. — The owner of the ship may pay, in lieu of the ship, her value at the end of the voyage, or the amount of her auction-value in case of compulsory sale before the end of the voyage.

ART. 4. — In all cases, the shipowner has the faculty to free the ship and accessories by paying an indemnity, limited, for each voyage, to £ 8 per ton on the tonnage of his ship.

ART. 5. — The above provisions apply to the liabilities for damages caused to property of any description whatever.

They apply to the liabllities correlative to the obligation of removing the wreck in case of stranding.

They do not apply to the obligation of paying the wages of the captain and crew, which obligation is deemed personal to the shipowner.

NOTA. — The French Association expresses further the desire that where there are personal injuries, causing death of persons or wounds, and resulting from faults for which the ship is responsible, the shipowner be bound to a special additional liability towards the victims (for instance, of £ 7 per gross ton).

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DANMARK

Danish Association of Maritime Law

Conflicts of Law as to Freight

Relating to the « questionnaire » sent to us by the International Maritime Committee, we beg to offer the following remarks (1) :

I

It is a principle of our maritime Law of 1st April 1892 that no freight is due when the goods are not delivered at the port of destination (Art. 151). Consequently, no freight is due for goods sold at the port of refuge to cover general average expenses.

However, the shipowner is entitled to recover by way of general average contribution the freight lost. Expenses which were saved are deducted (Art. 204).

When the goods are sold at the port of refuge for their owner's account, the whole freight is due (Art. 131).

When cargo is sold at the port of refuge on behalf of the vessel, it is optional to the owner of that cargo : 1) to claim the value of the goods at the port of destination under deduction of the freight (Art. 200), 2) or to claim the produce of the sale of the cargo at the port of refuge, without deduction of freight. (Art. 149 and 200).

(1) The question are mentioned in the report of the Hungarian Association.

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II

If the ship is lost or declared unseaworthy, freight is due *pro rata iteneris*. Article 160 however provides that not only the actual distance will come into account, but also the duration of the voyage, the special difficulties and the expenses. In case parties do not agree, this freight for « distance » is fixed by experts.

When the ship is lost or declared unseaworthy, the charterer may abandon the whole cargo in order to liberate himself from the « distance » freight. (Art. 160).

III

Freight is capable of being insured. (Art. 230).

IV

(As to freight *pro rata itineris*, see sub II).

When the vessel is lost or declared unseaworthy, the shipowner has no right to reforward the cargo for his own account, in order to claim the whole freight. But it is his duty to protect the interests of the charterer and to act as a *negotiarum gestor* for same. It may, according to circumstances, be his duty to reforward the cargo for charterers' account.

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FRANCE

French Association of Maritime Law

Maritime Mortgages and Liens on Ship

Text proposed by the French Association of Maritime Law

ART. 1

Mortgages and similar securities on ships, which are regularly established in each of the contracting States, will be respected in all other States and shall have there the same effect as in the country where they were constituted, subject to the provisions of the present treaty as regards Liens and maritime privileged rights.

ART. 2

Mortgages on ships and other similar rights are overranked by maritime privileges and Liens.

ART. 3

A privileged right on ships is given to :

1° Judicial costs, taxes and public dues, custody and conservatory costs.

2° Indemnities due for salvage, pilotage and towage and for general average.

3° Wages of the master and crew, since the last mustering.

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4° Indemnities due by reason of collision or any other accident caused by the ship.

5° Master's disbursments, money advanced to the master for the necessaries of the vessel during the last voyage; loans on bottomry; indemnities for damages to and short-deliveries of, cargo; claims for repairs, furnitures, supplies, outfitting and services.

6° Insurance premiums.

Art. 4

With exception of the provisions relating to seamens' wages, the rank of the privileges is determined by the date of the claims, the most recent having always priority.

Art. 5

Privileged claims or mortgage-claims are to be justified, the first by the law of the country where they arose, the second by the law of the flag.

Nota. — The French Association reserve their advice as to the prescription-period applicable to the privileged character of the claims. They consider it advisable that this privileged character be prescribed by a delay not longer than one year; but they further consider that, by reasons of humanity, seamen should, as much as possible, be entitled to the integrality of their wages, and they think it were good to find out a way of conciliating these two different points of view.

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HUNGARY

Hungarian Association of Maritime Law

Conflicts of Law as to Freight

The Hungarian Association have examined the questions proposed by their sister-Association, The Maritime Law Committee of the Netherlands, and reply as follows :

I

Question : Is the freight due for the goods sold at the port of refuge by reason of their damaged condition ?

Reply : Yes, as well in case of particular average, as in case of general average.

II

Question : Is the freight due *pro rata itineris* when the ship is lost but the goods saved either wholly or partly ?

Reply : Yes. However freight is not to be paid when the charterer proves that the voyage, as far as it was executed did not procure any benefit to him.

III

Question : Is the freight capable of being insured ?

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Reply : Freight may be covered by insurance. Only net freight can be insured when the disbursements for fitting the ship out are already covered by insurance.

Freight cannot be insured by the owner, if according to charter-party it is due at all events (ship lost or not lost).

IV

Question : Is the freight due when, at the port of refuge the ship is declared unseaworthy and the cargo reforwarded by another vessel ?

Reply : Yes, in such case, the freight is due.

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Hungarian Association of Maritime Law

RELATION

on Conflicts of law as to Mortgages and Liens on ships

The International Maritime Committee have submitted to us for discussion a draft-treaty on this matter, containing six articles.

Dr Atonio Vio, of Fiume, has written on this draft treaty the following relation which was brought before the meeting of the Council of the Hungarian Association of the 27th April 1905 and approved by same.

Articles 1 & 2.

Without modification.

Article 3

In the classification as proposed in this article, I think the following classes should be replaced.

« 1° judicial costs made for the common interest of the creditors, for acts of conservation and of execution on the vessel. »

In my opinion these costs should have preference before the other expences enumerated sub 1° of the draft in order that the creditor who takes the necessary arrangement for the sale of the vessel (without which nobody would be able to enforce his claim) be sure of having his expences refunded before the other judicial costs taxes, dues etc.

For this raison, the draft of Hungarian Maritime Code drawn up by Prof. Nagy, as well as the Italian, French and German codes give to these costs the first rank. The term used in the draft-

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treaty (judicial costs) needs to be more precised as it leaves in doubt wether it includes also the costs of te lawsuit brought by a creditor for enforcing his claim.

« 2° Costs of custody not included in nr 1 since the time of arrival in the last port until the sale; »

This class includes custody costs of the ship prior to its being under judicial arrest and to the acts of execution made in view of the sale.

The German code places the custody costs in the second class, the French commercial code in the 3th and the Italian code in te 4th.

3° « rent of the warehouses where the rigging of the vessel is kept. »

In the French code this kind of claims is placed in the 4th class, in the Italian code in the 5th, whereas in the German code they do not form a special class;

As claimants for rent have a legal lien on all objects deposited into the hired warehouse, I think it equitable that this claim be not placed in the same class as the custody costs enumerated sub N° 2.

4° « Expences for keeping in repair the vessel and the rigging after ist last voyage and its arrival at port. »

If, after her arrival into port, the vessel or her rigging and her furniture are repaired and completed in order to produce a higher price, it is but justice that these costs have preference over the claims resulting from acts and engagements entered into before or during the voyage. They deserve preference because they have increased the value of the ship and it is reasonable that those who have disbursed them have a preference, before the debts which existed previously.

Such costs must rank after those enumerated under the preceding items as these latter have benefitted as much to those wo expended money for repairing the vessel and her rigging after her last arrival at port.

5° « Wages of pilots, public dues, taxes on navigation, on tonnage, on light houses, of quarantine and port dues, which are relating to the vessel.

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Pilots wages are placed by the French code in the 2nd class (together with taxes into port) by the Italian code in the 4th class (together with te custody costs but after the taxes on navigation) and by the German code in the 5th class (together with indemnities for assistance and salvage, thus after custody costs, public dues and wages of master and crew.

Taxes on navigation public dues &c, are in the draft of Prof. Nagy placed in the 2d class, such as is the case in the French code, but in the Italian and in the German codes they have the 3-th rank.

In the Italian code, taxes on navigation rank after indemnities for salvage and assistance whereas the German code places these taxes and dues in the 3d class and the salvage and assistance on the 5-th rank.

I prefer the system of the German code because the greatest part of the taxes included in that class arise after salvage and assistance and consequently it is equitable that the creditor who gave assistance, contribute also te the payment of same and further because Governments would hardly accept a class less favourable to the public finances. Wages of pilots must in my opion have the same rank as taxes on navigation etc, because all these costs are of the same kind ; but they should rank after judicial costs, custody costs, rent for rigging-keeping, repairing and outfitting of the vessel, because all these latter costs benefit as well to the preservation of the claims of pilots and public dues.

6o « Wages, emoluments and indemnities due to the master or to other members of the crew during the last engagement but with a maximum of duration of 12 months before arrival of the vessel at the port where it is judicially sold ».

The draft of Prof. Nagy as well as the French Commercial code, the German and the Italian codes, give to this claims about the same rank, viz after taxes and public dues.

But the French and the Italian codes mention the wages of the last voyage, whilst the German code speaks of wages due according to contracts of engagements. But having regard to the celerity with which voyages are presently terminated, the limitation of the privilege to the wages of *the last voyage* seems too hard

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whilst on the other hand the duration of the contract of engagement is too long; consequently the provision for a twelve months duration of the privilege seems to me just and equitable, the more as according to article 433 of the French Commercial code requests for obtaining payment of the wages of the officers and seamen fall under prescription one year after the end of the voyage.

Then it will be necessary to fix the rank of claims for salvage and assistance, general average, bottomry loans entered into by the master in case of urgent necessity, expences made by him for the needs of the vessel, bottomry bonds, indemnities for collision, sums due to the seller of the ship for her sale-price and to contractors and to workmen employed at the constuction of the ship, for furniture, provisions, etc. before departure of the vessel, of the indemities due to the charterers for short delivery of goods loaded, the damages suffered by fault of the master or of the crew.

Claims of those who contributed to salvage and assistance, are not provided for by the French code amongst the privileged claims. Prof. Nagy's draft places them in 3-rd clas, the English law however in the 1st class, the Italian in the 2d and the German code in the 5-th class.

Contributions in general average are placed by Prof. Nagy's draft between the 5-th & the 7-th class ; by the Italian code in the 8-the class and by the German code in the 6-th class.

The sums due for loans contracted by the master for the needs of the vessel when far from the port where the owner resides, are placed in Prof. Nagy's draft in the 6-th class, by the French code partly in the 7-th and partly in the 9-th class and by the German code in the 2-nd class.

In my opinion claims arising out of salvage, assistance, general average and loans entered into by the master for the needs or the vessel must rank prior to the other kinds of claims mentioned above and also before the mortgages and the liens on the ship. Indeed salvage, assistance, general avarage, loans concluded and expenses made by the master during the voyage for the needs of the vessel contribute to save not only the ship but also the

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interest of all her creditors whose claims would have been lost if the ship were not arrived at destination.

Amongst the claims relating to the same voyage, those of latest date shall then have preference, because salvage, assistance, general average, or loans concluded by the captain for the needs of the vessel and having arisen at a posterior date will contribute to the conservation of the other claims mentioned here, which arose at a former date during, the same voyage.

Then must be examined the question whether this privilege must be limited to salvage etc. of the last voyage or whether it should extend also to salvage &c. relating to former voyages.

The draft treaty under examination and the Italian code only include de salvage indemnity due for the last voyage, whilst Pr. Nagy's draft and the German code include salvage and assistance indemnities in general. As to general average, the draft treaty in question mentions only general average during the last voyage whilst again Pr. Nagy's draft and the Italian and German codes include all general average.

As regards loans contracted by the master for the needs of the vessel, the draft-treaty and the French code allow only a privilege to those of the last voyage, whilst Pr. Nagy's draft and the Italian and German codes do not contain this restriction.

Now, I think it useless to limit the privilege to the claims of the last voyage, since the following article 5 contains a provision according to which claims relating to a later voyage rank before those relating to a former one, and considering that, for instance, it would not be just that claimants for salvage or assistance should lose every privilege also towards those creditors whose wights were saved thanks to that salvage, merely because the ship has undertaken further voyages before the claim was validated by a sentence considered as a « res judicata ». I consequently propose the following classification : expences, indemnities for assistance and salvage, costs of repurchase and revendicating, amounts due by the ship for general average, amounts due for liabilities contracted by the master for the needs of the vessel and reimbursment of the price of goods sold by him for the same reason.

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But what shall be the rank of the claims for damages caused by collision ?

The English and the American system give to this claim the priority in the second class, that means after the claims for salvage, pilotage and towage, but before the claims mentioned above. In the French and Italian codes, it has no privilege ; the German code gives a privilege, but only in the 10th class, to all claims deriving from a fault of one of the members of the crew (450-452) even when this person is co-proprietor or sole owner of the ship. It is often contended that indemnities for damages must not have preference and at least not rank before te maritime mortgages unless maritime credit might suffer by it, which would prevent the extension of maritime industry. But I am of another opinion for the following reasons :

1) because creditors who enter into transactions with a shipowner or his master may take all precautions they think fit, whilst those parties who have suffered prejudice by a collision were not in a position to do so.

2) because creditore who found their claims on contracts concluded with a shipowner, have also a right on all other property of the debtor, which again the sufferer by collision has not, on account of the shipowner's liability being limited to ship and freight,

3) because, if giving to mortgages and liens on the ship a priority over claims for collision-damages, the shipowners would be enabled to free themselves from all liability for eventual collision-damages by mortgages, even occult, on their ship.

4) because political considerations must not prevail on reasons of justice and equity.

Therefore, from all which has been put forward until now, is to be concluded that indemnities due for damages caused by collision shall have a rank prior to the other claims (with the exception of those mentioned at the preceding items) even if they were insured against by mortgages or other similar rights.

It must be examined what will be the connection of priority between indemnities for collision towards claims for salvage,

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assistance, common average, loans or expences made by the master during the voyage for the needs of the vessel?

It is quite evident that if these latter events arrive after the collision they are also in favour of the creditor whose claim arises out of a collision, because if after the collision the ship had not been salved or assisted, or if it had not had the general average, or if it had not contracted a loan, the claimant for collision would have lost his claim.

But when the collision takes place after one of the above mentioned events, *quid juris?*

The claim arising out of collision can not pretend to have a right of priority with the others claims, because it did not in any way contribute to the conservation of those claims: on the contrary they were endangerd by it.

There is no other reason to grant a preference to the collision claim.

If it be just that he who suffered by collision, receive an indemnity, it is still more just that he who risked his life and his property, who lost part of his cargo, who lent money for the safety of a ship, should not bear the loss. Should in this case the claim for collision rank *pro rata* with the claims for salvage, general average and loans for the needs of the vessel?

Suppose a voyage during which the following events occurred in the order of date hereafter:

1. a loan,
2. a general average
3. a salvage
4. a collision.

According to what is exposed above, from the price of the vessel should be paid: first the costs and expenses of salvage; secondly the contribution of the ship in general average, thirdly the sums lent for the needs of the vessel.

With which of these claims should rank the indemnity for collision?

It seems to me that it cannot have parity of rank with any of these three privileged debts and I think so chiefly for the reason that, if the contrary were admitted the readiness to

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operate salvage, or to give assistance, or to lend money, should diminish in a sensible measure if it were known that a collision, occurring later on, might render dubitable the recovery of all which would have been sacrified for either of these purposes.

Therefore, the draft under discussion and several codes give to the damages for collision a privilege after that for salvage, assistance and general average.

I then propose that damages arising out of collision, should be placed in a eighth class, thus :

8. « Claims for damages caused by collision. »

Remaining claims should be classified as follows :

9. The unpaid price of the vessal, claims for furniture and services at the construction or repairing of the vessel and claims for provisions and outfitting, as far as these claims arise and be enforced in the port where the vessel lies or in the ports of the same country where it calls during the same voyage. In the French code these claims are placed in the 8th class; the Italian code gives to the unpaid price of the vessal only the 12th class, whereas in the German code, it is not included amongst the privileged claims. The draft-treaty under discussion places under number 5 of art. 3 the sums due for provisions, services, furniture, etc. I think however that in the same class should also be included the price of the ship still due to the seller, the more as, with the restrictions contained in the proposed draft, this would not turn out to be a great disadvantage for the claims of the following classes.

10. « Indemnities due to the owners of goods for short-delivery of, or for damage to, their property by fault of the master or crew. »

The draft of Prof. Nagy places these claims in the 7th class ; the French code in the 11th. The Italian code places them also in the 11th class but with the restriction « of the last voyage ».

The German code places the claims for short-delivery and for damage to the goods laoded or to the luggage mentioned in article 674, in the 8th class and the claims arising from a fault o one of the members of the crew, even if he be a partner in, or sole owner of the vessel, in the 10th and last class.

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I think that the class I proposed is equitable and that we must strike out the restriction to the « last voyage » as established by the French code, for the reasons here above.

11. « bottomry loans concluded before the departure of the ship on her voyage. »

In the French code, this kind of claims has the 9th class ; in the Italian code the 8th and in the German code the 9th class.

The French and the Italian codes allow also a privilege to claims for insurance premiums for the vessel and her rigging during the last voyage. The German code and the draft-treaty under discussion do not grant any privilege to that claim and I am of the same opinion for the reason that Insurance Companies have the faculty to require payment of these premiums in advance.

Article 4.

Without modification.

Article 5.

In lieu of the proposed text, I should suggest the following wording :

« The order of the privileges will be inverse to that of the date of the voyages ».

For one same voyage, the rank shall be settled according to the enumeration. The claims mentioned under the same number in this article will have equal rights with exception however of the claims of number 7 and 11 of article 3, because for these latter the rule should be applied according to which claims under the same number of a former date, are overranked by those arisen lateron.

Art. 6.

Without modification.

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On the basis of these remarks we propose the following draft-treaty :

Draft-treaty on Mortgages and Liens on Ships

(As proposed by the Hungarian Association.)

ART. 1.

Mortgages and similar securities on ships, which are regularly established and published in one of the contracting States, will be respected in all other States and shall have there the same effect as in the country where they were constituted, subject to the provisions of the present treaty as regards Liens and mari time privileged rights.

ART. 2.

Mortgages on ships and other similar rights are overranked by maritime privileges and Liens.

ART. 3.

A privileged right on ships is given to :

1° Judicial costs expended in the common interest of the creditors for acts of conservation of and execution on the vessel.

2° Custody costs, not included under 1°, since the time of the vessel's arrival at the last port until her sale.

3° The rent of warehouses where the ship's rigging is stored.

4° The costs of keeping of ship and rigging, since her last voyage and her arrival in port.

5° Wages of pilots, public dues, taxes on navigation, on tonnage, light house dues, quarantine and port dues, relating to the vessel.

6° Wages, emoluments and indemnities due to the master and crew, during the last engagement-contract, but with a maximum of 12 months, before arrival of the ship in the port where she is judicially sold.

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7° Cost, indemnities, assistance and salvage price, as well as costs of repurchase and revendicating, the sums for general average due by the ship ; sums due for the liabilities contracted by the captain for the needs of the vessel, as well as expenses made by the captain for the needs of the vessel, and reimbursment of the of goods sold for the same reason.

8° Claims for damages caused by collision.

9° The unpaid price of the ship, claims for furniture and wages of workmen employed for the construction or repairing of the ship, and those for provisions and equipment, as far as these claims arose and are enforced at the port where the ship lies, or in the ports of the same country where she has called during the same voyage.

10° Indemnities due to the proprietor of goods loaded for shortage, and for damages caused by the fault of the master or crew.

11° Bottomry loans concluded by the master before departure of the ship on her voyage.

Article 4.

The privilege granted by the preceding article only exists when the debt in question is justified in the form prescribed either by the law of the country where it arose, or by the national law of the ship, and satisfies to the conditions to which the privilege is subjected by either the one or the other of these laws.

Article 5.

The order of the liens will be inverse to that of the dates of the voyages.

For the same voyage, the privileges will rank amongst them in the order of the enumeration in article 3.

Those claims which are classed under the same number in that article will have equal rights, with exception of the claims under 7° & 11° of art III as to them must apply the rule according to which claims classed under the same number, arisen formerly, are overranked by those which arose at a later date.

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ARTICLE 6.

The privileged character of all claims is subject to prescription after one year.

The national laws regulate the effect of the transfer of property in ships on privileged claims and mortgages.

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ITALY

Italian Association of Maritime Law

Remarks on the Draft-treaty on Maritime Mortgages and Liens on Ships

LIVERPOOL CONFERENCE

Nr. 2 of art. 3 of the draft-treaty places on the same rank the indemnities due for salvage, pilotage and towage during the last voyage.

It seems to me that a distinction should be drawn between the indemnities for collision and expenses for pilotage and towage and that indemnities for salvage should rank prior to these latter claims ; the services of a salvor are of quite another nature than the simple services of towage and pilotage, and the salvor deserves a much greater consideration than the tug or the pilot.

The draft-treaty allows a privilege in favour of the persons having suffered by collision and on that point every one must agree, as resulted from the unanimous vote with which this principle was accepted at the Amsterdam Conference. Difficulties begin however where the rank of that privilege must be fixed.

Taking in notice the system adopted by the English and North American law, the draft-treaty allows to this privilege a rank prior to that of the claims for moneys advanced to the master during the voyage for the needs of the vessel. A proposal to that effect was rejected by the Amsterdam Conference and, as I think, it was rightly, for one cannot understand why the creditors who have contributed with their money to the conservation of the

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vessel and to the completion of the voyage, should be overranked by those whose claim result from a fault of the master or of the other members of the crew. It is also to be feared that, if this system were accepted, it should prejudice the interests of navigation as the master would have much more difficulties to find out persons disposed to grant credit to him for the needs of his ship. My opinion is therefore that the privileges for collision must rank after that for moneys advanced to the master, under whatever form of contract, for the needs of his vessel.

Amongst the privileged claims, nº 5 classes also, on the same rank, moneys advanced to the master and bottomry loans.

This means doubtless the bottomry loan contracted by the master, during the voyage, in case of need.

But in order to avoid every misconstruction in the legislations which, as is the case in Italian law, have still the Loans on bottomry contracted by the owner and having no relation to the necessities of navigation, I think it necessary to state this more clearly.

Art. 6 provides that the privileged character of all claims is subject to prescription after one year. It appears desirable to suppress all doubt as to the question whether this provision may be extended also to the privileges which without having reference to the necessities of the voyage, may result from the free will of the parties either by a bottomry loan or by maritime lien given by the owners of the ship in view of a transaction of credit. As a matter of fact, a privilege drawing its origin from such source cannot be submitted to the very short delay of prescription for the maritime privileges, but it must have the same fate as the claim of which it is an accessory. In my opinion this point also needs to be made clear.

May 1905.

Prof. François Berlingieri.
Prof. Albert Marghieri.

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Memorandum
as to Priorities of Maritime Liens

One of the subjects for discussion at the next Conference of the International Maritime Committee is a code of rules to govern the mutual priorities of Maritime Liens. The following Note in an endeavour to shew what the English Law is in the matter and to indicate the differences between it and the general continental law. The maritime lien of our law corresponds to the continental *privilège*, a right which follows a ship into whosesoever hands she comes. In our law these liens are given for salvage, wages, collision, bottomry and master's disbursements.

The Conference of Amsterdam in 1904 resolved in favour of an uniform law for putting an end to conflicts of law with regard to rights in rem and preferential rights on ships without prejudice to such differences of law as arise with regard to matters of national interest only.

A resolution was also carried in favour of a maritime lien (privilege) being given for damage by collision, leaving it to the Committee to deal with the question whether it should be given for damage done by other accidents of navigation : but a proposal that the collision lien should be given the same rank as in the English and American laws was rejected, as was also a proposal that it should have the last place among liens just before hypothecs, and it was left to the Committee to propose what rank should be given to it. One may say here that the chief distinction between the English and American system on the one hand and the Continental ones speaking generally on the other

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is that the former systems treat the damage lien as of a higher nature than the others recognised by those laws often called liens *ex contractu* or *quasi ex contractu* (not including in these mortgages or *hypothèques*), but otherwise ranking liens *ex contractu* in the inverse order of their attachment on the *res*; while the Continental systems adopt a fixed order based on the nature and not the time of origin, at least in respect of liens arising on the same voyage, though giving precedence to the liens arising on a subsequent voyage to those on a prior voyage and giving preference to *frais conservatoires*, while a lien is only given for damage in very few cases and in many cases it is not given at all. It was proposed at the Conference, but not carried, that the order of liens might be : 1° State dues, 2° wages of crew, 3° salvage and then collision. Another suggestion made was that the order should be (after State dues) : 1° assistance and other conservatory out lays, 2° wages of masters and crew, 3° loans by the master during the voyage for urgent needs of the ship. As the claim of priority for the collision lien was based on its position in English and American law, reference was made at the Conference to the Note on Priorities of Claims under English Law contributed by Mr. Carver K. C. at the Hamburg Conference; and perhaps a supplementary Note dealing especially with the relative priorities of maritime liens in English law and their possible reconciliation with the Continental rules on this subject (*) and the suggestions made above may be of service to the Committee which will endeavour to frame a scheme of uniform rules for discussion at a future Conference.

(*) See M. Hennebicq's valuable paper at Hamburg Conference 1902, from which the following account of the foreign laws has been largely taken.

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The following points in English Law may be noted in this connection :

First, it is to be remarked at the outset that it has never been judicially laid down or contended that all maritime liens are in English law equal to each other e. g. crew's wages rank before master's wages and disbursements; life salvage is by statute given priority over other salvage; and the rule of ranking in inverse order has not been uniformly applied to all liens, e. g. wages have been allowed to precede a bottomry bond whether falling due before or after the bond, and a damage lien has been given priority over subsequent wages or bottomry.

Secondly, a distinction has been always drawn between two classes of liens, those *ex contractu* or *quasi ex contractu* and those *ex delicto*. The former have been described as liens in respect of rewards for benefits rendered which attach on the res in their inverse order of date, the latter as liens in the nature of reparation for wrong done. The order of the latter *inter se* has been held in the U. S. (*The Frank G. Forder* 1881, 8 Fed. Rep. 331, 1883, 17 Fed. Rep. 653. *The J. C. Stevens* 1897, 170 U. S. 113) stated in English textwriters to be that of their date of attachment on the res; and in England a prior *petens* for damage can enforce his judgment to the exclusion of a subsequent damage claimant who institutes his action on the very day that the judgment is obtained; where several damage claimants in actions *in rem* in respect of the same collision obtain successive judgments against the ship their respective liens are enforceable in the order of the judgment; but damage claimants who institute their actions before judgment is given in a suit prior to theirs are entitled to share rateably with the earlier plaintiffs.

Thirdly, as between these two classes of liens, if such a distinction really exists, it cannot be said to be an univer-

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sal rule that liens *ex delicto* are preferred to liens *ex contractu*, for subsequent salvage will precede prior damage ; nor can it be said that the rule of inverse order is universally applied, for a damage lien has been held to precede subsequent wages and also a bottomry bond given after the collision at least to the extent of the value of the ship at the time of collision.

Fourthly it is of historical importance in this connection to observe that before 1851 (*The Bold Buccleugh*) there had been no judicial recognition in England of a maritime lien for damage, and it was contended in that case that such a lien had never been recognised while a lien had previously been recognised for wages and salvage.

Fifthly, wages seem to have had originally the first place among claims on ship. This is so laid down forcibly by Lord Stowell, and Lord Tenterden (Abbott on Shipping), and by Dr. Lushington as against bottomry bondholders as the old rule of the Admiralty Court though he did not allow them priority over subsequent damage claimants against a foreign ship on the ground that the crew had a remedy in their own country.

Sixthly, the decisions of the Admiralty Court do not seem to follow any hard and fast rule, at least in former times, for deciding priorities, except that the rule of inverse order was taken as the guide in claims *ex contractu*, but they rather aim at doing justice between all claimants ; and in a recent case (*The Veritas*) the Court seems to have been ready to give claimants in damage who might not have a maritime lien priority as if they had such a lien over prior salvage claimants if it thought this just.

The preference assigned to the damage lien as a general rule over other liens has been based on 1° the consideration that reparation for wrongs should come first, otherwise the injured party might be unable to satisfy his claim out of the

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res without paying off prior claims which arise in such circumstances that the claimants may be said to have chosen to run the risk of subsequent events affecting their claims, 2° on the ground of justice and because of its involuntary origin. The American Maritime Law Association base this preference on the interests of public security. It is to be observed that the English Committee in 1902 reported to the Hamburg Conference in favour of preferential rights against a vessel to claimants for salvage, wages, necessaries, master's disbursements, bottomry, and damage, the order being 1° salvage, 2° the other claims except damage in order of date, 3° damage, unless happening *after* the incidence of the former when it should have the preference. In 1904 they reported to the Amsterdam Conference in favour of applying the inverse order of date to all liens ; and on both occasions they stated the principle « upon which precedence of lien should rest, should be that so far as possible each party should have the security of the property (i. e. excluding any liens or obligations already attaching to it) *as it was when his claim arose*, but subject to subsequent claims which have liens upon the property ».

In English law a maritime lien is given for damage done by a ship, the ship being the instrument of the damage : this includes personal damage though not such damage if merely received on board a ship, nor such damage resulting in loss of life (because for this no action *in rem* will lie) : and also for damage caused without collision but in order to avoid collision or damage e. g. having to slip an anchor, and damage done by ship to a dock or landing stage. There is no maritime lien for damage to cargo against the vessel in which it is laden, but the process *in rem* is available in such a case if the shipowner or a shipowner is not domiciled in England or Wales.

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There is no maritime lien for damage caused by a ship owing to the negligence of those on board her for which her real or apparent or *pro hac vice* owner is not responsible, e. g. a compulsory pilot or master committing a criminal act outside the scope of his employment; nor for damage done by a ship without negligence of those on board her, e. g. by *vis major*, but in the case of a ship sunk and abandoned in a harbour or its approaches a remedy is given against the res and the « owner » (whoever he is) having possession of her at the time of the damage.

It is to be noticed that in English law the shipowner's right to limit his liability is given in respect of loss or damage caused by the « improper navigation of the ship », which includes negligence of any person employed by the shipowner with regard to the construction, overlooking and management of the ship, i. e. it is independent of maritime lien.

The judgment of a competent foreign Court affecting to enforce a maritime lien which is not such a lien by English law is as a judgment *in rem* binding on an English Court.

There is no maritime lien for mortgage, but it the mortgage is registered the Admirality process *in rem* is available and mortgages rank in the order of their registration.

There is no lien on ship cargo or freight for insurance premiums (as in some foreign Codes); owing to the practice of insurance being done through brokers it would be difficult to create one.

There is no maritime lien (but a possessory lien which the master may be bound to enforce for the protection of other parties to the adventure for general average in English law; nor is the process *in rem* of the Admiralty Court available for enforcing this right against the property subject to it, though the Admiralty Court will give effect to rights in

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general average brought before it in actions of bottomry.

There is no maritime lien for freight in English law nor is any process *in rem* available for recovering it, it being only the subject of a possessory lien. But freight when in the nature of salvage on cargo is given precedence over bottomry bond on cargo in Admiralty.

There is no maritime lien for necessaries in English law (though the Maritime Law Committee recommend that it should be given one), and the Admiralty process *in rem* is only available for its recovery where the necessaries were supplied on the high seas or in England to a foreign ship, or where the necessaries are supplied to a ship elsewhere than in the port to which she belongs if the shipowner is foreign or is not domiciled in England.

In English law freight is included in the res liable to satisfy maritime liens on the ship for collision and bottomry and wages, and the right to recover wages formerly as a general rule depended on whether freight was earned and freight was knwon as « the mother of wages ». In salvage it is treated as a separate entity and contributes as such to the award decreed against the salved res. In bottomry if the ship and the freight are separately owned, payment is made rateably out of both, and they must be exhausted before the cargo can be resorted to, even in a bond given on the cargo only.

There is no maritime lien on freight unless there is one on ship in respect of the same debt, e. g. for master's disbursements, for which he has no authority to pledge the shipowners' credit and consequently can have no maritime lien on ship, there is no maritime lien on the freight. Though the freight is often for convenience treated as part of the cargo when there is no question between the ship and cargo, neither ship nor cargo can be made liable for the share of salvage due from the other.

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Cargo is only liable to maritime liens directly for salvage and bottomry (respondentia) as above, and indirectly as a means of getting at the freight in other cases. Where cargo is on board the ship freight may be arrested by arrest of the ship ; where cargo has been landed freight is arrested by arrest of cargo, and possibly where the freight has been paid and can be traced, e. g. to a Bank, it can be followed by process of the Admiralty Court. Where cargo is arrested for freight the cargo-owner to obtain its release must bring in the freight. It is to be remembered that in English law the shipowner cannot by wrongful abandonment of the ship put an end to the contract of affreightment (though he can by a proper abandonment), but no freight is payable in such a case by the cargo-owner.

The priorities of liens even where the ship is foreign are decided by the *lex fori* : and in this connection it will be remembered that the draft treaty defining the bases of jurisdiction (competence) if adopted internationally may considerable increase the number of *leges fori* applicable in case of collision.

Finally two other points in English law may be noticed. 1) In every case where there is a *res* against which a maritime lien can (or could except for exceptional reasons, e. g. the *res* being State property) be enforced by a proceeding *in rem* a remedy can equally be had by a proceeding *in personam* against the owner or person interested, except in bottomry (where however the master may make himself personally liable on the bond) ; and in salvage it has been held recently that if the *res* cannot be arrested for such a reason as given above the charterer of the ship can be made liable to the extent of his interest. There is therefore no reason for preferring one lien to another on the ground that otherwise its holder will have no remedy, except in the case of wages and damage for which there is a remedy though the

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res does not exist, but even in those cases the remedy may be made nugatory by the insolvency of the shipowner or by his being a single ship company (see paper by Dr. Stubbs, International Law Association, Milan, 1883).

2) The liability of the shipowner on a maritime lien is not necessarily (though generally it is from the nature of the case) limited to the value of the *res* or the amount of the bail given to release it from arrest: the ship may be rearrested if the bail is insufficient to meet the costs of the action in respect of which bail was given: and the shipowner may make himself liable for an amount more than that value or amount if it is decreed against him by appearing in a action *in rem*, e. g. in an action for collision if he does not limit his liability.

With regard, therefore, to the proposals for uniformity in the order of liens mentioned above, it cannot be claimed for English law that it furnishes any uniform principle to which all the judicial decisions on maritime liens and their mutual rank can be referred, beyond the partial rule of the inverse order of chronological attachment on the *res*, which as seen above is not absolutely adhered to; and unless all the maritime liens are treated as equal to each other this system would require to be supplemented by some sort of classification of them according to their differing values. The English system differs at first sight so widely from the Continental ones with their elaborate arrangement of a series of privileges ranking against ship, freight, and cargo in differing order of incidence that agreement between the two systems seems a matter of extreme difficulty. The alternative is to alter both in favour of a system based on principle, irrespective of whether the necessary legislative alterations would be great or small. This latter course does not seem one likely to be adopted, and it seems at the present moment more practical to compare how the two

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systems provide respectively for the chief questions mentioned above.

As regards wages, the proposed preference in any event of wages over all other liens would at any rate not be a provision unfamiliar to our law, as seen above, so far as the crew are concerned (not perhaps including in the term « seamen » masters or pilots, the master in our law being postponed as regards claims for wages and disbursements to the crew's wages and the pilot having a summary remedy for his fees). The favoured position of seamen in this respect as in others e. g. the exemption of their wages from liability to contribute in general average or salvage, seems common to all systems though it is coupled in our law with the disability to insure their wages which is not imposed by *French* or *Belgian* law). In the Draft-Treaty on the Limitation of of Shipowners' Liability it is proposed that no limitation shall be allowed against seamen's wages. In the *German* law the shipowner is responsible for the crew's wages personally in addition to their lien upon the ship and freight of all voyages performed under the agreement then in force, and their claim precedes all except *frais conservatoires* and State dues; the Spanish law has the same provision: in *Scandinavia* wages come second on the ship after pilotage, salvage and rescue. In *Portuguese* law they follow judicial costs and charges made in general interest of creditors, salvage, pilotage and towage into port, port dues, and custody of ship. In *Dutch* law wages fall on the ship after salvage and pilotage, port dues etc., and conservatory charges, in case of judicial sale. In several systems they fall primarily on the freight, e. g. *Italian* law puts them third on the freight, and so does the law of *Holland*: in *France* and *Spain*, ship and freight are charged with the payment of wages of officers and crew. In *France* wages of the last voyage come on the

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ship after the *frais conservatoires* and judicial costs, in *Belgium* after costs and dues of navigation and salvage.

The Continental Law speaking generally, may thus be said on the whole certainly to give a preference to wages.

Secondly with regard to the difference between the two systems of charging the various interests making up the *res* with different liens or with the same liens in varying order of incidence; the *German and Scandinavian* laws, like the English, include freight in the subjects of maritime liens on the ship, while the *French, Belgian*, *Spanish*, *Dutch*, and *Italian* laws treat it as distinct from ship. In the *German* law cargo is specially liable to bottomry, general average, (and the lien follows the goods even after being delivered to third parties), salvage and freight, ranking in inverse order of date but freight always comes last. In *Spanish* law, as in *French* and *Belgian* law, freight is charged with wages and bottomry on ship ; while the cargo is liable for *a*) bottomry on cargo *b*) general average, *c*) freight, the two last being not liens proper but only rights of detention or attachment. In *Portugal* cargo is charged with *a*) judicial and other charges incurred for the general interest, *b*) salvage, *c*) Customs duties, *d*) the freight and costs of discharge, *e*) warehouse expenses, *f*) general average, *g*) bottomry, *h*) insurance ; while the freight is charged with *a*) judicial charges in the general interest, *b*) wages, *c*) general average, *d*) bottomry, *e*) insurance premiums, *f*) compensation for short delivery. In *Italy* freight is separately charged with, 1. judicial costs, 2. salvage, 3. wages, 4. general average, 5. insurance premiums, 6. bottomry, 7. compensations to freighters, 8. liabilities of freight. Liens created in the same port precede all others, but after the voyage is resumed the later debts precede prior ones. The cargo is charged with, 1. judicial costs, 2. salvage, 3. Customs dues, 4. transport

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charges and unloading, 5. warehouse charges, 6. general average, 7. insurance premiums, 8. and 9. bottomry. The ship is charged with, 1. judicial costs, 2. salvage during last voyage, 3. navigation dues, 4. pilotage and watchman's charges of ship in port, 5. warehouse charges, 6. expenses of keeping up ship after last voyage and arrival in port, 7. wages, 8. general average, 9. bottomry, 10. insurance, 11. short delivery to shippers, 12. unpaid purchase money due to vendor, 13. unregistered bottomry bonds, if concurrent the one first registered precedes.

In the law of *Holland,* in the case of a judicial sale, the liens on ships are: 1. judicial costs, 2. the debts relating to the last voyage, which include the following in the order named, *a*) salvage and pilotage, *b*) port and tonnage dues, *c*) watchman's wages till ship is sold from time of entering port, *d*) warehouse charges for same time, *e*) wages, *f*) necessaries and advances to the ship and bottomry, 3. liens which have three years duration and comprise, *g*) costs of repairs, *h*) debts for building the ship, *i*) bottomry for equipment of the ship previously to her departure except the interest on the loan, *j*) damages for non-delivery of goods or averages of them due to fault or barratry of master or crew, 4. the price of the ship and 2 years interest, and hypothecs.

In *English* law a table of liens upon ship, freight, and cargo would give their mutual order as follows:

1. *Ship.*

1. where ship is arrested the marshal's fees for retaining possession, appraisement, (including unlivery of cargo if necessary), or sale come first, and the marshal may include in his charges dock dues, pilotage, towage, and other similar charges which he thinks properly payable by the *res* by direction of the registrar.

2. final salvage, life salvage always coming first.

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3. damage unless subsequent to salvage (when it precedes it), or prior to a bottomry bond when it will not rank against any accession of value made to the res by the bond.

4. wages of crew including their viaticum home, earned on the voyage during which the liens accrued (subject to N°7. below), these ranking before a bottomry bond on that voyage while wages on a former voyage would be postponed to it, and before towage and light and dock dues. Next to crew's wages come wages and disbursements of the master, which may be postponed to a bottomry bond or a mortgage on the ship of which he has personally guaranteed the payment.

5. payments for wages, pilotage, towage, light and dock dues at port of arrival (pilotage counting as wages) precede No. 6.

6. Bottomry bond, if subsequent to damage and made by a stranger in good faith precedes it as against the accretion of value thereby made to the res : bond given in port of departure yields to No. 5. : bond precedes claims for necessaries under a subsequent possessory lien of shipwright and also a claim for necessaries supplied before the bond even though such claim was pronounced for before the bond was sued upon : bond precedes mortgage.

7. Possessory lien of shipwrights and other « necessaries men, employed by mortgagor in possession precedes right of mortgagee, and it precedes subsequent maritime liens which rank next after them.

7a. Unpaid vendor of ship would come next, and he can bring a suit for possession of the ship.

8. Mortgagee has no maritime lien but ranks before necessaries men for necessaries supplied after registration of mortgage even though the mortgagee was in possession when the necessaries were ordered (if not ordered on his behalf), and as above shewn he will precede a master's

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claim for wages if master personally guaranteed the mortgagee, and No. 10 below.

9. Necessaries men, though they cannot compete with a purchaser buying even with notice of the claim before the suit for necessaries was instituted.

10. Claims for damage to cargo and towage, which rank after mortgage or other valid charges on ship.

Freight. — All the above liens attach to freight as part of the ship, but in salvage, bottomry, wages, and general average freight is separately liable for its rateable share of the liability of the res.

Cargo. — Cargo besides being liable to arrest for freight in the cases above mentioned, is liable to the following liens in order :

a) final salvage.

b) general average, possessory lien.

c) bottomry, after ship and freight exhausted; a respondentia bond is postponed to general average on cargo and to a claim in the nature of salvage on cargo such as freight for carrying on cargo transhipped subsequently.

Costs and legal charges — In actions against proceeds of property arrested *in rem* the costs payable under decrees of the Court rank together with the claims in respect of which they have been incurred. Again, where a party in an action *in rem* has incurred costs which have benefited not only himself but parties in other actions against the same property those costs will, if the proceeds are not enough to satisfy all the claims in full and costs in the different actions, be paid to him in preference to any other payments made out of the res therein.

Solicitors have a lien on proceeds which they have secured for their clients, but this is postponed to any lien already existing on the res, e. g. the crew's viaticum.

There is not therefore so much difference between the

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two systems as to prevent both agreeing to adopt, after giving a first charge in any event to wages, the principle of *frais conservatoires* if these would include our « final salvage » in priority to other previous liens subject however to the third point next following as to the inverse order of liens.

Thirdly, it may be considered how far the principle of ranking liens in their inverse order of date is recognised in the Continental systems. In *French Spanish* and *Belgian* law the order of liens is an absolute one fixed by the nature of the lien and all claims falling under the same head share concurrently, except in the case of bottomry where the last loan in date precedes the others, those of a later voyage preceding those of an earlier one, those made during a voyage preceding those made before the voyage, and the latest loan on a voyage preceding earlier ones on it.

In *German* law the principle is adopted in a secondary way. Absolute precedence in any event is given to charges for watching and preserving the ship over all other ship's creditors. The rights of a ship's creditor are acquired by 1) conservatory charges above mentioned, 2) public and port dues, 3) wages, 4) pilotage and salvage, 5) general average, 6) bottomry, and other advances or supplies in case of necessity, 7) non-delivery or damage of goods and bagage, 8) claims arising out of transactions made by the master as such without special authority, or out of contracts made by the shipowner within the the sphere of the master's duties, 9) claims arising out of the fault of one of the crew even though he is also sole or partowner of the ship, 10) seamen's claims for insurance against the owner. The rights of a ship's creditor are not affected by the fact that the shipowner became personally liable for the claim either originally or subsequently, particularly this is so as regards the claims of the crew for wages. Where there are several

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voyages N°s 2-9 above relating to the last voyage precede those of earlier voyages; and those of a later voyage precede those of an earlier one; but wages of the crew on an earlier voyage under the same contract have the same precedence as those of a later voyage, and where bottomry is made on several voyages the bottomry creditor ranks after creditors claiming in respect of voyages begun after the termination of the first of such voyages. Claims relating to the same voyage are paid in the order given above, exept that N°s 4-6 are treated as equal and classed together in the third rank, N° 7 comes 4th, and N°s 8 and 9 come fifth. All claims under N°s 1, 2, 4 and 5 classes under the last section mentioned are equal; those in the third class (pilotage, salvage, general average, bottomry) follow the principle of inverse order, the more recent preceding earlier ones and these arising simultaneously having eqnal rights; bottomry and other loans of necessity arising out of the same case of necessity are held to arise simultaneously and claims arising out of credit transactions particularly bottomry loans made by the master to pay off earlier liabilities under class 3, or claims arising out of contracts made by him connected with such earlier liabilities have the same priority as the earlier claim, though the credit transaction or contract was necessary for the continuation of the voyage. The seamen's insurance always comes last whatever the date of its origin.

As regards liens on the cargo, the inverse order governs, e. g. freight, general average, and salvage; freight always comes last, later claims precede earlier ones and simultaneous ones are equal. In *Holland* order of time does not affect liens of the same class competing with each other, except in case of putting into a port of refuge when later debts precede earlier ones. In *Italian law*, as seen above, regard is had to both the nature and the date of

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origin of liens, debts created in the same port precede others, but after the voyage is resumed later debts precede the earlier ones. In the *Scandinavian laws* a distinction is made between the case of one voyage or of several voyages : in the latter case liens on ship of a later voyage precede those of earlier voyages except the wages of master and crew which have a duration of 12 months; in the former case a fixed order is observed, 1) pilotage, salvage, 2) wages of master and crew, 3) general average and similar charges, bottomry, and the claim of the cargoowner for compensation for his goods sold for the necessities of the ship, 4) master's liabilities for needs of ship or owner's contracts within the scope of the master's authority, and damages for fault of master or crew, and master's personal advances for the needs of the ship. Creditors of the same class rank equally, except in classes 1 and 3 where they will not do so unless they arise out of the same case of necessity, but the later precedes the earlier ones. Cargo is charged with *a*) salvage *b*) general average, bottomry, *c*) engagements by master for benefit of ship, *d*) freight. This order is adhered to, and all of the same class share concurrently, except in *a*) and *b*) when they will only do so if arising out of the same case of necessity, otherwise the later precedes the earlier.

The practical effect of the Continental systems on this point is that the principle of inverse order of liens is recognized to the extent of preferring liens of a later voyage to those of an earlier one, but where there is one voyage only, it is the exception and not the rule.

Fourthly as regards a *time of prescription for maritime liens,* there are already short periods prescribed by the stet Codes. Bottomry, 5 years from date of contract, in France, 3 years from falling due in Belgium, 1 year in Germany; 3

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years in Spain, 5 years in Holland, 5 years in Italy from date of falling due; in Scandinavia apparently 1 year.

Collision has been dealt with in the Treaty on Collision.

Wages, 1 year in France and Belgium, 1 year in Germany, in England 6 years for master including masters' disbursements, crew and perhaps pilots, 1 year in Holland, Italy and Scandinavia.

In England there is no prescription for maritime liens except for wages (see ante) beyond the period within which with due diligence the claim could be enforced. As a period of two years has already been adopted in the case of collision (see the Treaty) a similar short period like those in some of the Continental Codes could be adopted.

With regard to liens *ex delicto* (collision), it seems hardly likely that the foreign Codes, which it will be remembered limit the shipowner's liability by the value of the res for other liens as well as damage, (except in some systems for wages of the crew), in admitting a new lien to rank against the res will give it the first place ; and in principle and historically the Anglo-American systems in giving damage the first place seen admittedly to have made a departure from the theory of the civil law, on which our Admiralty law is based, and that too only within comparatively recent times. The grafting of Common Law doctrines upon our Admiralty law and especially on such points as personal liability of shipowners and the liability of the res, whether in contract or tort, has caused difficulties in our law which are naturally intensified when it is attempted to harmonise our law with foreign laws which follow the civil law. The American Courts seem to have followed a better course in maintaining the theory of the real liability in maritime jurisdiction and Admiralty proceedings rather than the quasi-personal liability of our law. Maritime liens with them are

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jura in re, or proprietary rights in the *res*, and on this theory the treating of all liens as equal whether arising in contract or in tort, and having their precedence governed by the same principle (that of the inverse order of their date of attachment of the res) is perfectly logical. On the theory of our law liens are not such, they are only « the foundation of a process to make perfect a right inchoate from the moment that the lien attaches ». (*The Bold Buccleugh*). It is to be noticed however that in a recent case a lien has been described as a *jus in rê alienâ*, a right derived from the owner either directly or through acts of persons deriving their authority from the owner, but a right to a personal claim does not always co-exist with a right against the res. » (Sir Gorell Barnes in *The Ripon City*).

It might be possible to combine the two systems by providing that the order of liens might be :

1) all expenses which have brought the *res* (whether ship cargo or freight liable to the lien) before the Court, e. g. *frais conservatoires*, salvage, pilotage, wages, and subsequent bottomry, sharing rateably *pari passu*.

2) damage during the voyage, of more than one rateably it being remembered that in English law satisfying the damage lien seems too established a part of our system to be passed over, and making this satisfaction need not necessarily deprive other maritime lien holders from getting compensation as no limitation of liability exists against them.

In other claims the inverse order and date might be applied and thus there would rank,

3) previous salvage during the voyage.

4) bottomry during the voyage and disbursements.

5) Possessory liens for necessaries.

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A brief summary of the German law relating to Shipowners' Liability

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§ 1. — *Shipowners Liability. General principle.*

In order to understand the system of the German law with regard to the limitation of shipowners' liability, it is well to make this broad and general statement, viz : that the laws of all commercial countries concur in alleviating somehow or other the heavy burden of responsibility lying on shipowners' shoulders. This exception to the general rule of *respondeat superior* is not based on any principle, but on equity or, rather, forms part of the commercial policy of a maritime country. Shipowners' business and, consequently friendly intercourse between maritime nations would soon come to an end if the law should either bind by too many restrictions individual freedom with regard to contractual stipulations or should make the shipowner liable indiscriminately and without restriction for any slight fault of his servants towards third parties with whom he is not in a contractual nexus. Considering the immense value of modern ships and modern cargoes, to destroy which a slight error or petty negligence committed by captain or crew of either the carrying or the colliding vessel would suffice, shipowners would face ruin, if the law did not come to their aid. Therefore, not in order to encourage but to enable shipowners to carry on their

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business their liability must be a limited one : this is a point of national interest and protection.

Now, with regard to the manner in which this limitation is practically to be applied, this is a matter of mere convenience and of legal method. Two considerations must be kept well apart from one another : the limit of liability and the cases in which the limitation applies. With regard to the limit of liability the system of the German code springs from historical ground : the descendants found no reason for altering the work of their forefathers. With regard to the application of the rule of limited liability to certain defined cases, the maritime code started from the idea already mentioned, that in equity the shipowner cannot be made liable for the faults of persons over whom he has no control. The system of limited liability as laid down in our Maritime Code is founded on convenience and legal method.

§ 2. — *Limit of liability*

Centuries past, the system of limiting shipowners liability to ship and freight, relieving him from personal liability, became largely the custom and the law regulating European commerce. But whereas in France and adjoining countries the idea of the Roman *noxæ datio* led to the system of abandonment now in force, Germany adhered to the views and ideas of German law in establishing from the outset the rule that the thing itself and not the owner, is liable for any damage done by it, that is to say : that the owner is in no way personally liable, but is bound to hand over the ship and her freight to meet the claims of his creditors or, rather, of the creditors of the ship. Cargo-owner and shipowner both entrust their property to the mercy of the waves, and are bound together by a common tie. The ship with its crew and its

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cargo is an integral whole, and just as it visibly leaves the shores to brave the perils of the sea, far away from any man's power and control, so it shall be also legally separated from the land, alone to earn the profits and to sustain the loss. This view in olden times was carried even so far as to make also the cargo liable for a damage arising out of a collision, whether there was any one to blame or not. This idea was an offspring of the old German law making each member of a community responsible for the acts of his brethren. Later on, the cargo-owner being no longer present on board the ship, but entrusting his goods to the care of the shipowner — the idea prevailed of looking upon the latter as being the responsible head of the common adventure. The shipowner alone was held responsible, the limit of his liability being his *fortune de mer,* that is to say : the ship and her freight.

Thus it is seen that the German system as to the limitation of shipowners' liability developed itself gradually, an outgrowth of ancient legal maxims, an offspring of German life and German thought. Theoretically and this may be said in view of the heated discussions of late regarding a uniform law in matters of shipowners' liability, there is no legal principle in any system limiting shipowners' liability, nor is any of these systems one whit better than an other ; but it should be borne in mind that it is easier and more commendable to alter a ever changing legislation than an inveterated custom, both of which, it is contended, work equally well.

§ 3. — *Cases to which the rule of limited liability applies. Master's transactions.*

This same idea of looking upon the ship and her freight conjointly, as a separate and distinct entity, together with

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the impossibility of the shipowner to control every act of the master, lead to the solution of the second question viz : to which cases does this rule of limited liability apply? Only in cases where the owner cannot be reasonably expected to do the business himself, but leaves its performance to the captain or crew, there is room for limiting his liability- and only where the acts of master and crew are done within the scope of their employement, is there room for any liability at all.

Now, the master is not only, in common with the officers and crew, entrusted with the technical management of ship and cargo, but the owner must necessarily leave to him a good part of the ship's commercial business, lest the performance of the voyage should suffer intolerable delay. It goes without saying that the owner is in no way in a better position, as to a control of his servants, with regard to these business transactions, than he is with regard to all other acts of master or crew.

At port of registry. — With this view the German Maritime Code has defined the duties of the master. Naturally, as long as the ship remains in her port of registry, the owner himself is able to attend to the ship's business. At the port of registry, therefore, the authority of the master is restricted. Thus, with two single exceptions, he is not allowed to enter into any contract, however necessary it may be for the performance of the voyage : he has simply to attend to the management of the ship.

It is his business to have the ship ready for and fit to receive the cargo ; he is responsible for unseaworthiness, for bad stowage or undue delay in despatching the vessel — and so on. But he can not bind the owner by signing for instance a contract of afreightment or act of sale or mortgage of the ship ; even the purchase of provisions or coals or other outfits of the vessel do not come within the

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scope of his legal duties. But the master being in closer contact with the crew and therefore better knowing his servants than the owner does, he is more competent in this relation than is his principal. The law therefore makes it a duty of the master to engage the crew. Also the master and not the owner, having to deliver the cargo to the consignee, it is the master's business to sign the bills of lading. These are the two single exceptions above referred to §§ 526, 642 al. 1.

Abroad. — The ship once having left her port of registry, the position entirely changes. At sea the master is, to use the phrase in an old French bill of lading : *le seul maître après Dieu*. The master has to perform the voyage in order to carry out the contract of affreightment. The scope of his legal authority had to be enlarged for the purpose of enabling him, without any special power of attorney, to meet all incidents common to a voyage across the sea. The law, therefore, authorises the master, once outside the port of registry, to transact on behalf of the owner all business matters, whether legal or other, rendered necessary for the performance of the voyage. Thus, if it be necessary for such purpose, he is authorised to enter into contracts of affreightment, to sign bottomry bonds, to engage in law-suits, to sell cargo, — and so on § 527. The master acting within the legal scope of his employment is so to say the mouthpiere of the *fortune de mer*, whereby this separate entity makes its will and its requirements known to third parties. The master, therefore, remaining within these limits cannot but make responsible the *fortune de mer* of his owner § 533 al. 1.

Master and not owner responsible. — But whenever the master, without special authority to do so, oversteps these limits, the owner is not committed at all, but only the master § 533 al. 2. Thus, if the master sells the ship con-

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trary to the provisions of the law permitting such a sale in certain cases and minutely prescribing the formalities to be complied with (§ 530), without special leave of the owner, the latter is not bound by the act of his servant. In such a case, the sale is null and void, no right to the ship would be transferred to the buyer and, if purchase-money had already passed, the purchaser could reclaim his money from the owner only so far as he could prove that the money had come into possession of the owner without consideration.

Of course, the owner is free to restrict the legal limits of the authority of the master, just as, also, he may extend them as far he likes. But he cannot plead such restriction in a lawsuit brought against him by a third party relying upon the validity of the captain's transaction as being within his legal authority, unless he can prove that the restriction was known to the plaintiff at the time of the transaction. §§ 531, 486, N° 1 & 2.

§ 4. — *Faults of master & crew.*

The same view which leads to a limitation of shipowners' liability for business transacted by the master within the legal scope of his employment, also justifies the rule that the owner is affected only in his *fortune de mer* by faults committed by master or crew in the performance of their duties.

Therefore, if the master, always keeping within the limits of his legal authority, either in contracting himself or in carrying out engagements made by the owner, commits a fault occasioning loss to third parties, the owner is answerable only to the extent of ship and freight. § 486, N° 3.

With regard to faults committed by the crew, it may be

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remarked that all persons appointed to duties on board must be treated on the same footing as the crew proper, so long as their employment lasts. § 486, N° 2 & 3.

§ 5. — *Cases where owner is also personally liable*

Not only so long as the master acts within the legal scope of his authority but also for faults committed by captain or crew in the performance of their duties, the owner is only answerable to the extent of ship and freight. This rule is justified by the fact, that the owner can neither control his master or crew in the performance of their technical duties, nor the business transactions of the master abroad, the scope of which transactions the law has defined precisely in view of this fact.

But if the owner guarantees the fulfilment of a contract, the non-performance or the incomplete performance of which would without such a guarantee involve a limited liability only, there is no room for such a privilege. The owner is personally liable, besides being answerable with ship and freight. § 486 al. 2.

The same is the case, whenever the owner himself commits a fault, either by not preventing the wrongdoer from doing an act leading to a claim for damages or, by directing the master or another servant to do a wrongful act although the owner had full knowledge of the facts. If this is a case in which, without the fault or privity of the owner, merely his liability in rem would have been engaged, the injured party now has not only a claim against ship and freight, but also upon the *fortune de terre* of the owner Besides this, the wrongdoer himself remains liable. § 512 al. 2 & 3 § 486 al. 2.

A fault may be committed by the owner in negligently

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choosing an unskilful or otherwise inefficient master (*culpa in eligendo*).

There is yet one case to be mentioned where, besides the responsibility *in rem*, also the personal responsibility of the owner is involved. Although the crew is engaged by the master, the owner is nevertheless answerable not only to the extent of ship and freight, but also personally for all claims of persons of the crew, arising out of contracts respecting their services and wages. This rule, it may be said, has been universally adopted § 487.

§ 6. — *Cases where owner is personally liable only.*

All facts and transactions not mentioned in the three preceding paragraphs involve the personal liability of the owner only without giving a lien on ship and freight; there is no need for making any distinction between his *fortune de mer* and his *fortune de terre*. Any such creditor, although he may have arrested the ship as part of the property of his debtor, is not deemed a ship's creditor and has not the rights and privileges of those whose claim gives rise to a limitation of the liability of the shipowner. (1)

§ 7. — *Illustrations.*

To explain the foregoing rules some cases might be cited.

The owner is personally liable for any transaction he

(1) In all cases of limited liability the creditors have merely a claim against the « fortune de mer » enforceable by reason of the lien they have on ship and freight. These creditors are called shipcreditors as distinguished from any other ordinary creditor. Shipcreditors are endowed with certain rights and privileges specially defined in the German Maritime Code.

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has authorised the master to make outside the legal limits of the latter's employment. The common rules of the law of agency apply. Thus, if on special authority the master, at the port of registry, signs contracts for the provisioning and outfit of the vessel, the owner is bound just as if he himself had made the contract, and is personally liable because there is no reason for and therefore no provision in the Code to the effect of limiting his liability. But if the master signs such a contract having no authority to do so, the owner is not bound at all. But if the master neglects his legal duty to see that the vessel is properly furnished and fitted out and properly provisioned before entering upon a voyage; any claim arising out of his negligence immediately involves a limited liability on the part of the owner.

Further, the owner is responsible to the charterer for defective condition of the ship. Unseaworthiness involves his personal responsibility. But again, it is also the duty of the master to see that the vessel is in a seaworthy condition. Therefore, if a claim arises out of the negligence of the master in this respect, it is a claim of a ship-creditor having a lien on ship and freight) and if at the same time the damage can be imputed to negligence of the owner in not having discovered the defective condition of the vessel, the creditor has not only a lien on ship and freight, but the owner is personally liable too.

The law has thus wisely defined the legal authority of the master at home and abroad, precisely because the owner cannot be expected to be personally present, that any transaction or fact lying within the legal limits necessarily, if damage arises, gives rise to a ship-creditors claim upon the *fortune de mer* only ; but that any transaction or facts lying outside these limits must be regulated according to the general rules of the common law. The only excep-

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tion the law makes is with regard to the claims of the crew for services and wages ; an exception necessitated by reasons of public policy.

§ 8. — *Masters' Responsability*

So long as the master keeps within the legal limits of his authority, his own responsibility is not involved at all, unless he is guilty of some fault or negligent act, or, to use the terms of the law : unless he has not exercised the care of a properly qualified master. § 511. In such a case, of course, his personnal liability would be involved, even if the owner had directed him to do the wrongful act. § 512 al 2. But as soon as the master passes the boundaries the law has fixed, his relations are governed by the general rules of the common law. If he thus acted without authority of the owner he alone and not the owner or the owners *fortune de mer* will be held responsible, but if he acted on special authority given to him by the owner, the owner alone is responsible, and neither will the master be held liable nor will it be a case of a limited liability attaching to ship and freight only. § 526 al 1.

§ 9. — *On the master being the owner*

If the master is himself the owner of the ship, it has been contended by some authors that he should be made personally liable in every case, there being no longer any reason for restricting his liability. This case is not provided for in the German Maritime Code nor has it ever come up before the courts. Now, it is quite true that the principal reason for limiting shipowners' liability in the manner the German Code has done, is the impossibility of controlling the master and crew when abroad. In the case before us

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this reason of course no longer holds good. But this does not do away with the primary reason for at all limiting shipowners' liability : the impossibility of carrying on shipowners trade without such a limitation. The impossibility to control the master and crew only affects the manner in which the German Code has effected a limitation, but does not affect the necessity for somehow relieving the owner of his heavy burden of responsability.

Generally speaking, the rule of limited liability applies to cases of fault of master and crew and of transactions of the master abroad. But the other reason, apart from the impossibility to control the owner's servants, must not be lost sight of : i. e. the view of the German Code that ship, freight and cargo are a separate entity, with its own rights and duties, as such. For salvage or at least for general average purposes this view seems to be universally adopted. Accordingly, therefore, anything done in the common interest would not involve the *fortune de terre* of the owner as being a thing foreign to the interests concerned.

It would be unreasonable to establish unlimited liability in cases where the master owns the vessel — this would be *contra rationem legis ;* it would be equally unreasonable and at the same time unnecessary to introduce a new system of limitation not provided for in the German Maritime Code, — our legal system so well adapting itself to the case in question. As a matter of fact, the emergencies in which the master would have to act for the common interest, pretty well cover the scope of his legal authority. It may therefore be safely said that, whenever the master (being the owner) acts within the legal limits of his authority *qua master* in order to pursue and complete the common adventure, or, whenever a claim arises through the fault of one of the crew : the owner's personal liability is not involved, but only his *fortune de mer*.

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The view here taken coincides with the interests of third parties doing business with the captain. If there would be no liability of the *fortune de mer* as such, there would be no ship-creditor either (see note at end of § 6). Third parties therefore would not acquire the privileges of the latter, but would merely rank with all other creditors of the owner. Third parties knowing the master to be the owner, would certainly think twice before doing business with him, if the rule of limited liability would not be admitted.

It may be stated that in one single case the law admits of the right of a ship-creditor where the master is also the owner of the ship, viz : in case of a claim arising through the fault of master or crew. § 754, N° 9. But the law is silent on the point, whether or not the owner's personal liability is also involved — thus leaving the question before us undecided.

§ 10. — *Against whom does-right of action lie ?*

The owner can always be summoned to appear before the courts of the port of registry of his ship, to answer any claim of his creditors whether they want to make him liable personally or to the extent of ship and freight only. In the latter case — a case of limited liability — the creditors are at liberty to sue the master instead of the owner, as being the representative of the *fortune de mer*. A judgment thus obtained against the master is valid also against the shipowner. §§ 488, 761.

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Diplomatic Conference of Maritime Law

1st SESSION — FEBRUARY 1905

Conférence Diplomatique de Droit Maritime

1e SESSION — FÉVRIER 1905

PROTOCOLE — PROTOCOL

Les Délégués soussignés, convaincus des grands avantages qu'à tous les points de vue présenterait l'établissement d'un droit uniforme en matière d'abordage et d'assistance maritimes, et constatant les dispositions favorables manifestées à cet égard au cours des travaux de la Conférence par tous ses membres, sont unanimement d'accord pour :

1° Soumettre à leur Gouvernement respectif, aux fins d'examen, les projets préparés par la Conférence et qui sont ci-annexés ;

2° Suspendre les délibérations de la Conférence et les ajourner à une date à proposer par le Gouverment belge.

Fait à
Bruxelles, le 25 février 1905.

(*Suivent les signatures*).

The undersigned Delegates, convinced of the great advantages which would result in all respects from the establishment of a uniform law as to Collisions at Sea and Marine Salvage, and having regard to the favourable dispositions shown as to this during the labours of the Conference by all its members, are unanimously agreed :

1st. To submit to their respective Government for considerations the drafts prepared by the Conference and hereto annexed ;

2nd. To postpone the deliberations of the Conference and to adjourn to a date to be proposed by the Belgian Government.

Made in
Brussels, on 25th February 1905.

(*Signatures*).

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Ire ANNEXE AU PROTOCOLE

1st ANNEX TO THE PROTOCOL

Projet de Convention pour l'Unification des règles à appliquer en matière d'Abordage

Draft of Convention for unifying the rules to be applied as to Collision at Sea

ARTICLE I

La réparation des dommages causés par abordage survenu entre navires de mer ou entre navires de mer et bateaux de navigation intérieure, est soumise aux dispositions de la présente Convention sans qu'il y ait à tenir compte du lieu où l'abordage s'est produit.

The indemnity for damages caused by collision occurring between sea-going ships, or between sea-going ships and ships employed in internal navigation. is submitted to the provisions of the present Convention, without regard as to the place where the Collision occurred.

ARTICLE II

Si l'abordage est fortuit, s'il est dû à un cas de force majeure ou s'il y a doute sur les causes de l'abordage, les dommages sont supportés sans recours par ceux qui les ont éprouvés.

Cette disposition reste applicable dans le cas où l'un des navires aurait été au mouillage au moment de l'accident.

If the collision is without fault or is due to inevitable accident, or the cause cannot be determined, the losses are to be borne by the persons who have suffered them.

This provision is applicable even in the case where one of the vessels was at anchor at the time of the accident.

ARTICLE III

Si l'abordage a été causé par une faute, la réparation du dommage incombe à celui des navires qui l'a commise.

If the collision has been caused by fault, the ship which committed the fault is bound to make good the damage.

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ARTICLE IV

S'il y a faute commune, la responsabilité de chacun des navires est proportionnelle à la gravité de sa faute.

Les dommages causés soit aux navires, soit à leurs cargaisons, soit aux équipages, passagers ou autres personnes se trouvant à bord, sont répartis entre les navires, dans ladite proportion, sans solidarité à l'égard des tiers.

In the case where both ships have been in fault, the liability of each of the ships is proportionate to the gravity of its fault.

The damages caused, either to the ships, or to their cargoes, or to the crews, passengers or other persons on board, are apportioned between the ships, in the said proportion, without their being jointly liable towards third parties.

ARTICLE V

La circonstance que l'abordage a été amené par la faute d'un pilote dont l'emploi était obligatoire, ne fait pas obstacle à la responsabilité du navire, telle qu'elle est établie par les dispositions de la présente Convention.

The circumstance that the collision has been brought by the fault of a pilot whose employment was compulsory, does not prevent the ship being responsible as established by the provisions of the present Convention.

ARTICLE VI

L'action en réparation des dommages subis par suite d'abordage n'est subordonnée ni à un protêt, ni à aucune autre formalité spéciale.

The action for indemnity for damages suffered by collision is not subject either to a protest or to any other special formality.

ARTICLE VII

L'action se prescrit par deux ans à partir de l'événement.

Les lois nationales règlent ce qui concerne l'interruption et la suspension de la prescription.

The action is barred by prescription two years after the event.

The national laws regulate all questions relating to interruption and suspension of the prescription.

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ARTICLE VIII

Les navires entrés en collision sont obligés de se porter secours autant que les circonstances le permettent.

Les lois nationales déterminent les peines applicables aux contrevenants.

Le propriétaire du navire n'est pas responsable du capitaine ou de l'équipage à raison des contraventions à la disposition qui précède, et le défaut de porter secours n'entraîne pas une présomption de faute au point de vue de la responsabilité pécuniaire de l'abordage.

Colliding ships are bound to assist each other as far as circumstances permit.

The national laws determine the penalties to which those breaking the regulations are liable.

The owner of the ship is not responsible by reason of breach of the preceding regulation by the captain or crew, and the neglect to afford assistance does not entail a presumption of fault from the point of view of pecuniary liability for the collision.

ARTICLE IX

Sous réserve de conventions ultérieures sur la limitation de la responsabilité des propriétaires de navires, il est entendu que les présentes dispositions ne portent point atteinte à la nature ni à l'étendue de cette responsabilité telles quelles sont réglées dans chaque pays.

Subject to any further agreements as to the limitation of shipowners' liability, it is understood that the present provisions do not alter in any way the nature and the extent of that liability as regulated in each Country.

ARTICLE X

La présente Convention est sans application aux navires de guerre.

The present Convention does not apply to men-of-war.

ARTICLE XI

Les Etats qui n'ont pas signé la présente Convention sont admis à y adhérer sur leur demande.

The States which have not signed the present Convention are admitted to adhere to the same on

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Cette adhésion sera notifiée par la voie diplomatique au Gouvernement . . . et, par celui-ci, à chacun des autres Gouvernements ; elle sortira ses effets un mois après l'envoi de la notification faite par le Gouvernement.

. . . . . .

their request. This adhesion shall be notified by the diplomatic way to the Government . . . and by the latter to each of the other Governments ; it shall come into effect one month after notification has been made by the Government

. . . . . .

ARTICLE XII

La présente Convention sera ratifiée et les ratifications en seront déposées à . . . le plus tôt possible, et, au plus tard, dans le délai d'une année à compter du jour de la signature.

Un mois après la clôture du procès-verbal de dépôt des ratifications, la Convention entrera en vigueur entre les États qui l'auront ratifiée.

The present Convention shall be ratified and the ratifications of it shall be deposited at . . . as soon as possible, and at latest within the period of one year from the date of the signature.

One month after the closing of the procès-verbal of deposit of the ratifications, the Convention shall come in force between the States which shall have ratified it.

ARTICLE XIII

Dans le cas où l'une ou l'autre des Parties contractantes dénoncerait la présente Convention, cette dénonciation ne produirait ses effets qu'un an après le jour où elle aurait été notifiée au Gouvernement . . . . et la Convention demeurerait en vigueur entre les autres Gouvernements contractants.

En foi de quoi, les Plénipotentiaires des États respectifs ont signé la présente Convention et y ont apposé leurs cachets.

Fait à Bruxelles, en un seul exemplaire, le . . . . . .

In case either of the contracting Parties denounce the present Convention, this denunciation shall only have effect one year from the day on which the notification be made to the Government of . . . . and the Convention shall remain in force between the other contracting Governments.

In witness thereof, the Plenipotentiaries of the respective States have signed and sealed the present Convention.

Made in Brussels in one copy on the . . . . . .

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PROTOCOLE DE CLOTURE

Au moment de procéder à la signature de la Convention conclue à la date de ce jour entre . . . . . les Plénipotentiaires soussignés sont convenus de ce qui suit :

Les Gouvernements des Hautes Parties contractantes s'engagent à prendre le plus tôt possible les mesures nécessaires pour rendre d'application générale, chacun en ce qui le concerne, les dispositions énoncées dans la Convention.

Le présent Protocole, qui sera ratifié en même temps que la Convention conclue à la date de ce jour, sera considéré comme faisant partie intégrante de cette Convention, et aura même force, valeur et durée.

En foi de quoi, les Plénipotentiaires soussignés ont dressé le présent Protocole.

Fait à Bruxelles, le . .

CLOSING PROTOCOL

At the time of proceeding to the signature of the Convention concluded this day between . . . . . the undersigned Plenipotentiaries have agreed as follows :

The Governments of the High Contracting Parties bind themselves to take as soon as possible the necessary measures to secure the general application of the provisions contained in the present Convention, each as far as it is concerned.

The present Protocol, which shall be ratified at the same time as the Convention concluded on this day, shall be considered as being an integral part of this Convention and shall have equal force, value and duration.

In witness thereof, the undersigned Plenipotentiaries have drawn the present Protocol.

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LIVERPOOL CONFERENCE

JUNE 1905

REPORT OF PROCEEDINGS

CONFÉRENCE DE LIVERPOOL

JUIN 1905

COMPTE-RENDU

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Opening of the Conference
Ouverture de la Conférence

SITTING OF WEDNESDAY, JUNE 14th, 1905
SÉANCE DU MERCREDI, 14 JUIN 1905

The International Maritime Conference
was opened at Liverpool on June 14, at 3 o'clock, in the Town-Hall.

La Conférence Maritime Internationale
fut ouverte à Liverpool, à l'Hôtel-de-Ville, le 14 Juin à 3 heures.

Mr. Beernaert *in the Chair*. — *Présidence de* M. Beernaert

The Lord Mayor (the Hon. John Lea). My lord and gentlemen, — It is my great honour to-day to welcome to the city of Liverpool a number of visitors — some from our own land and others from across the sea, and to tender to one and to all, in the name of the city and the name of all that is good in the city, a cordial welcome to this great city; and not only do we welcome one and all to Liverpool, but it is my pleasing duty, as chief magistrate, to offer a warm welcome to this historic Mansion House, and to assure those engaged in the conference that they will be very welcome to use this handsome council chamber so long as they may consider well to their deliberations. We welcome to-day, on behalf of five English associations, a number of gentlemen who have come from over the seas on what is really an international question; it does not simply concern England and Liverpool, altough we are so great a shipping nation, but it is fitting that this confe-

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rence should be held in Liverpool, where so many ships come and go, and so much commerce by the sea takes place. We welcome all to-day, not only in the interests of the legal and other objects that they have in mind, but as those who are united by goodwill and comradeship in the work of peace and of goodwill among the nations. Our business will not be simply one of legal conference, but it will lead, I trust, to a great increase of that mutual respect and goodwill without which no alliance among nations can count for very much; and in furthering the objects of your association I am sure that we shall further the interests of peace and of goodwill, not only amongst those who have come to England as England, but those who meet to-day as representing, I think, twelve foreign countries amongst themselves; I understand that there are representatives to-day from France, Germany, Austria, Hungary, Belgium, Norway, Sweden, Denmark, the United States of America, from Japan, Holland and Italy. To one and all we tender the warmest of welcomes to our city, trusting that these gentlemen may be in a very large measure not at all out of place; we welcome them here as ambassadors of peace. And now, sir, I bid one and all welcome tho this council chamber, hoping that their deliberations will tend to further all that is good amongst the nations, and also very greatly tend to increase the results of the conference and of those connected with maritime law. I beg, in conclusion, to express the best wishes of the city for the success of your deliberations. (*Applause*).

M. le Ministre Beernaert (Belgique).

Mylord Maire, Mesdames, Messieurs,

Je vous remercie au nom de mon pays, comme au nom de mes compatriotes et au mien, de la si flatteuse récep-

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tion que nous fait en ce moment la municipalité de Liverpool.

Nous sommes fiers de saluer sous ces voûtes historiques le chef et le représentant de cette grande cité, le premier port du monde, trait-d'union entre l'Europe et l'Amérique, la reine de cette Mersey, fleuve vraiment impérial.

Mylord, nous sommes venus ici pour travailler avec vous, la main dans la main, à la réalisation du progrès hautement désirable et dont l'Angleterre a pris, la première, l'initiative : l'unification du droit de la mer.

Chose étrange : cet Océan qui ne connaît de maître que Dieu, où nul n'est souverain, où aucune loi ne peut être édictée ni appliquée, cet Océan, l'homme a prétendu le soumettre à vingt règles diverses et à des formalités de tous genres. Cela ne doit pas être. L'Océan ne doit connaître qu'une seule et même loi, applicable à tous, et sous toutes les latitudes.

C'est à ce résultat que nous venons travailler avec vous et je ne sache pas qu'on puisse nous assigner un lieu plus favorable que Liverpool. Nulle part ailleurs on ne peut voir de plus haut et plus sûrement les intérêts des choses de la mer. Nulle part, on ne peut mieux comprendre le besoin chaque jour grandissant de cette entente universelle qui est une cause de paix, comme le disait, il y a un instant, votre Lord Maire. Nulle part on ne peut mieux comprendre les prescriptions de cette solidarité universelle qui forme aujourd'hui la loi des peuples, la loi de l'avenir.

Je remercie donc encore une fois la municipalité de Liverpool et le Lord Maire de l'accueil qu'ils veulent bien nous faire.

M. René Verneaux (Paris). Je viens à mon tour vous remercier des paroles de cordiale bienvenue que vous nous avez adressées.

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Les délégués français ont été particulièrement heureux de voir le Comité Maritime International tenir ses assises dans cette grande et glorieuse cité de Liverpool. En 1899, nous étions réunis à Londres; nous ne pouvions mieux faire que de nous réunir cette année dans cette grande cité, dans laquelle nous nous instruirons de toutes façons non seulement sur le droit maritime, mais dans toutes les manifestations du commerce et de l'industrie.

Au nom de l'Association française, je vous remercie, Mylord Maire, des paroles aimables que vous nous avez adressées et de votre cordiale hospitalité.

OBERLANDESGERICHTSRATH DR. BRANDIS (Hamburg).

Mylord,

In Namen der Herren die aus Deutschland hieher gekommen sind, spreche ich meinen herzlichen Dank aus.

Auch wir aus Deutschland sind davon durchdrungen dass die Arbeiten des Comité Maritime International von sehr grossen Bedeutung sind und wir sind gern bereit Alles mögliche beizubringen um die Schwierigkeiten zu überwinden.

Ich achte mich glücklich für diese Gelegenheit die grosse Handelsstad Liverpool zu besuchen und bin sehr geehrt durch Ihr herzliches Willkommen.

M. FRANCESCO BERLINGIERI (Naples). Au nom de l'Association italienne de Droit Maritime, que j'ai l'honneur de représenter par délégation de son président, je salue la noble ville de Liverpool dans la personne de son illustre Lord Maire.

Je salue tous ceux qui ont bien voulu apporter le précieux concours de leur expérience et de leurs études à cette conférence qui aura la plus haute importance au point de vue de notre œuvre.

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Le moment est venu, Messieurs, de solutionner la grande question de la Limitation de la Responsabilité des Propriétaires de navires et ce sera cette conférence, qui, je l'espère, réussira à prévenir les conflits de lois en cette matière, à concilier le système du Continent avec le système de la Grande-Bretagne.

Permettez-moi aussi, Messieurs, d'ajouter que je salue ce merveilleux port de Liverpool au nom de son petit confrère, le port de Gênes.

Mr. Suketada Ito (Japan). My Lord Mayor, — It is a great honour to me to address you. While I was in Japan, I learned about this committee's task, in which Japan, of course, takes a great interest. As you are aware, the committee's work during nearly ten years since its organization has been progressive and has flourished year by year.

Appointment of the President of the Conference

Élection du Président de la Conférence

M. A. Beernaert (Bruxelles). Je pense que la désignation de notre président ne peut être qu'une simple question de formalité, la nomination de M. Justice Kennedy étant évidemment indiquée d'avance, et je suis sûr que vos applaudissements ratifieront ce que je viens de dire. (*Applaudissements*).

Sir Alfred Jones (Liverpool): My Lord Mayor and Gentlemen, — In seconding the resolution that Mr. Justice Kennedy be appointed to the presidency of this conference, I think I will have your unanimous support. There is no doubt that in getting Mr. Justice Kennedy here to-day to preside over us, we shall have a fair and full discussion of this great universal question. Now, to-day we appear not as

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an English company or as a British company, but as a company of the world ; we appear as one family pleading for a law which will equalise all questions for all parties. There can be no doubt, the discussion will be very useful on al points. These questions are slightly altering with regard to the maritime affairs of this country, and you cannot have any greater example than in the previous speaker from Japan. It is a wonderful thing that the Japanese should be represented here to-day : but it shows the wisdom in this stage — early stage it may be — of coming to some unification of the law of nations for the maritime conduct of the affairs of the world. I have great pleasure in seconding the resolution to appoint Mr. Justice Kennedy to the presidency.

Mr. Justice Kennedy is elected, unanimously, president of the Conference,

Sir William R. Kennedy est élu comme président de la Conférence, à l'unanimité.

Mr. Justice Kennedy (President). My Lord Mayor and Gentlemen, — It is with very great feelings both of pleasure and pride that I accept the office which you have been so kind as to bestow upon me. I think that our labours, to which I shall do my best to contribute, will be fruitful for the good of all nations, and redound also to the credit of this great city of Liverpool, in which we are meeting. I shall not now say more, for the duties of this afternoon are to be formal ; but what little I have to say in helping on the work of this assembly will be said when we meet for business to-morrow morning. But there are some matters to which I ought to call your attention now, and first amongst those are the letters of regret for not being

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able to attend, which have been given me by the secretaries. I have a letter here first of all from the Lord Chief Justice of England, whose absence, I am sure, we will all deeply regret. He writes to the secretary, Dr. Stubbs : « I very much regret that it is impossible for me to be present at Liverpool at the Conference of the International Maritime Committee . » I have a letter also from my friend Judge Raikes, of Yorkshire, who has been a most faithful attendant at previous conferences, expressing his great regret that he cannot be here ; also from Mr. Marsden, the author of the standard work on « Collisions at Sea » ; and from Sir Theodore Angier, a most active man of business, who has taken a great interest in the subject we have to discuss, and who writes that he has « an engagement on the 15th which keeps me in town for a week. It is most unfortunate, as I was counting on being present at the conference. » I have also a letter here from another gentleman who has taken from the first a great interest in all the work of the Committee, namely, Sir John Glover, who writes to say that he is « very reluctantly obliged to forego the pleasure of joining you in Liverpool, owing to the advice of my medical adviser. » and saying that he has already written to Mr. Franck in regard to some matters in connection wich the subjects which we have to discuss. I have also a letter from one who was present at one of the last conferences, Duke Mireli, who has written to our general secretary, Mr. Louis Franck, saying that he is prevented by illness from taking part in the conference, and he desires that his best wishes should be conveyed to those taking part in the conference. Next, I have a letter from a gentleman who has in a practical way worked hard for the Comité Maritime, namely, my friend Dr. Stubbs, who writes that it is absolutely impossible for him, contrary to his hopes, to be present here on this occasion.

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As you are aware, where there is any vote concerned in the work of this conference, the votes are given by nations. It is therefore desirable that, at the earliest possible moment, the various nations engaged should elect their vice-presidents, and I understand that some countries, notably England, are ready to appoint their vice-president, and I hope that any other nation that is now ready will nominate their vice-president, so that his name may be forthwith entered. I believe that there are, or will be, represented here, besides our own country, Austria, Belgium, France, Germany, Hungary, Italy, Japan, Norway, Sweden, Denmark, and the United States. I believe that the representatives, or most of the representatives, of Denmark, and the United States are not able to be with us at this moment, and therefore we cannot get their nominations until to-morrow morning ; but it will greatly facilitate the work which has to be done if those nations who are represented here now will appoint their vice-president, and those which are not ready to do so will nominate, after this formal meeting is concluded, so that, if possible, the secretaries will be in possession of the names. I might mention that we have the great advantage for this purpose of having present and willing to act as secretaries — and I must name him first — M. Louis Franck, to whom this Committee owes a great deal of its vitality and interest for everyone ; he is the general secretary, and we have the very great pleasure of having him with us here, and also Mr. Leslie Scott, who, locally, has done a very great deal indeed for the work of this conference. (*applause*). Besides them there are also kindly acting as secretaries Mr. Gow, Mr. J. D. Barker and Dr Alf. Sieveking.

I have only got to add that it will no doubt be felt to be great gain to those who are really anxious to follow and take the work which we are going to do in the next three

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days, and also to understand the points which will be discussed, if I may tell them that there will be accessible to them, first of all, an abridged programme of the whole proceedings of this conference, including the festivities which our kind hosts have prepared for us in many forms, and also an able summary of proceedings at the conference of the International Maritime Committee in reference to shipowners' liability, which has been prepared for them, by Mr. Poplimont of Antwerp « The Draft Treaty on the Limitation of Shipowners' Liability. » Those are special papers, which will be of great use, I am sure, to members attending the conference and, lastly, a document which has only just been put in my hands, and which I have not yet myself perused, headed « Conférence Diplomatique » &c., which relates to those documents which have been brought before the meeting that has already taken place in February last, at which the official representatives of most of the nations were present, as to a uniform law of collisions at sea and marine salvage. If any gentlemen who is present wishes to have any of those documents and has not received them, the secretaries will be very glad to tell him where they can be obtained. I do not think for the present, gentlemen, that there is anything more to add.

(Traduction orale par M. Louis Franck).

M. le Président a communiqué à l'assemblée le sens des lettres de regret écrites par Lord Alverstone, M. le juge Raikes, Sir John Glover, le Duc Mirelli, Dr Stubbs.

Il a ensuite signalé les tableaux synoptiques et rapports préparés en vue de la Conférence. Enfin il vient de demander aux différentes nations de bien vouloir s'entendre pour choisir les vice-présidents qui les représenteront au bureau.

Dans un moment, on appellera les différentes nations par ordre alphabétique pour qu'elles nous disent quels sont leurs élus.

L'appel nominal ayant été fait, les désignations suivantes sont faites :

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OFFICERS OF THE CONFERENCE
BUREAU DE LA CONFÉRENCE

Vice Présidents :

Great-Britain. — Grande-Bretagne
Sir ALFRED JONES (Liverpool).
Austria — Autriche
Dr. AUG. SCHENKER (Vienne).
Belgium — Belgique
M. CHARLES LE JEUNE (Anvers).
Denmark — Danemark
M. CHR. HVIDT (Copenhague).
France — France
M. RENÉ VERNEAUX (Paris).
Germany — Allemagne
M. LE JUGE BRANDIS (Hambourg).
Hungary — Hongrie
M. le Dr. BENYOVITS (Fiume).
Italy — Italie
Prof. Dr. FRANÇ. BERLINGIERI (Gênes).
Japan — Japon
M. SUKETADA ITO (Tokio).
Norway — Norvège
M. le Dr. OSCAR PLATOU (Christiania).
Sweden — Suède
M. E. DE GÜNTHER (Stockholm).

Hon. General Secretaries. — Secrétaires-généraux :

M. JAMES D. BARKER (Liverpool).
M. LOUIS FRANCK (Anvers).
M. WM GOW (Liverpool).
M. le Dr. ALFRED SIEVEKING (Hambourg).
M. LESLIE F. SCOTT (Liverpool).

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The PRESIDENT : That being so, gentlemen, there is only one matter which I think I have to mention to you, and that is with regard to the arrangements for to-morrow. We shall meet at 9,30 here, and the first matter that will be taken of business will be « The Draft Treaty on the Limitation of the Shipowner's Liability », in the nature of a general discussion, as stated on the programme in the draft treaty which has been submitted to the conference. According to the programme which you have, there the first subject is « Collisions at Sea and Salvage : Report on the Diplomatic Conference at Brussels and on the labours of the International Maritime Committee » ; but for several reasons, and not least amongst them the fact that, owing to duties elsewhere of a public nature, Mr. M'Arthur, who was to have given us important information upon this subject, cannot be here before Friday morning, the discussion of that report will be postponed until Friday morning. Therefore, the business for to-morrow will be « The Draft Treaty on the Limitation of the Shipowner's Liability ». We shall meet, as I have said, at 9,30, and subject to the wish of the conference, which, of course, rules not only the chairman but everybody here, the general idea is that we should not sit after five o'clock in the afternoon. I think there is nothing more now, gentlemen, to detain you in these formal proceedings, and I therefore adjourn the further proceedings of this conference until 9,30 to-morrow morning at this place.

The sitting is adjourned. — La séance est levée.

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THURSDAY, JUNE 15th 1905

JEUDI, 15 JUIN 1905

Proceedings resumed at 9.30 a. m. in the Town-Hall under the presidency of M. JUSTICE KENNEDY

Séance ouverte à 9.30 heures à l'Hôtel-de-Ville sous la présidence de M. le JUGE W. KENNEDY

Presidential address. — Discours présidentiel.

Mr. JUSTICE KENNEDY (president).— I do not propose in opening the practical work of this meeting to keep you listening to any lengthy remarks of mine. But there are some of those who are present who have not taken part in past meetings of the Committee and to whom it may be convenient that I should, as I propose, quite shortly place them in possession of the exact position in which the conference stands in regard to the practical questions which are now for our consideration. Let me say, only by way of preface, that the object of this International Maritime Committee has been for many years past that which must be obviously desirable to men who are engaged in any branch of maritime commerce. It is to bring harmony so far as is possible into the laws which regulate the transaction of commerce in every part of the civilised world, and, through bringing those laws into harmony, to diminish the anxiety and the expense of those who, whether as shipowners or as merchants, have great risks in the carrying on of these mercantile operations of every sort — anxiety, risk and expense, and beyond, and in a certain sense spiritually higher than these — the object has been through these means, through this greater harmony, to diffuse among those who have

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a large part in the government of the world, and therefore a very large part in the maintenance of its happiness and the increase of that happiness — in bringing men together in closer relation and with greater confidence in their transactions of every sort. Now, having these objects in view, the International Maritime Committee was, I think, even before the year 1897, founded by those who were prepared to give their time and their thought to those important matters. There were conferences, to which for the practical purposes of to-day it is not necessary to refer — conferences which were held, I think, in Brussels in 1897, and in Antwerp in 1898, but for the purposes of what we have to consider during these few days here in Liverpool, it is not necessary to go back beyond the conference that was held in London in 1899. That conference began the discussion in the practical form of the subjects which are still in a sense before us. There was then discussed with great care and minuteness the questions which are connected with the law in reference to collisions at sea, using the words « collisions at sea » in a general and not in a narrow form, because it was not intended to exclude collisions in territorial waters where one of the ships in collision was at any rate a sea-going vessel. Now with regard to collisions at sea, what was practically put on a firm basis in London was subsequently discussed in one form or another at subsequent conferences which took place in 1900 at Paris, 1902 at Hamburg, and with regard to the result the position as to that is this : two draft-treaties have been discussed clause by clause. If these treaties have not at present official recognition, they have however attracted to such extent the attention of a great number of governments that they have been made the subject of an official, diplomatic conference, which met in February last, and that February-conference is to

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be continued in the September-Session that is to come. Well, now, with regard to that we will, I hope, to-morrow morning hear something from Minister Beernaert and from Mr. Mc Arthur, who is at present not here; but let me tell those who wish to know how the matter stands that substantially with regard to collisions — substantially there is only one important point in the treaty — at least the proposed treaty as I understand it — which differs from the law as we Englishmen have the law amongst us at the present date. This difference, the important one to which I have referred, is that, in dealing with matters of collision where both ships are to blame, the conference has accepted the view which at any rate many other countries had approved of strongly, viz., the apportionment, as it is called, of blame; that is to say, that where there were two vessels which had come into collision, and in respect to which it could be said that neither was free from blame, the Court which has to deal with the case, if it thinks the facts of the case are such as to make it just, can apportion and ought to apportion the blame in a form which would show the extent of the difference. That, of course, is a divergence from our present law. After careful consideration it has approved itself to those who have discussed and dealt with this draft treaty. It is unquestionably an important change; it is a proposal for change rather, which will no doubt receive great attention, and officially in the conference from other nations, from those who have the great responsibility of recommending to the nations, fearlessly and officially, any change of such a kind. There is in the same draft another change: the abolition of compulsory pilotage. It was agreed that wherever there was liability by reason of faulty navigation by one ship, that liability should not cease, because the owner proved that the vessel at the time was in the charge of a compulsory pilot.

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Another matter has advanced to the same stage ; I mean the law of salvage, or the law of maritime assistance. Although there are, in the draft treaty on that matter, several differences with the laws of other European States, I agree with what I have heard said elsewhere by one well qualified to judge — Mr. Justice Phillimore — that substantially the law proposed, article by article, represents the law of this country. Some alteration has been made on one point, not of great importance. In the view of the majority of the conference, there ought not, in the case of collisions at sea, to be any presumption of fault against a vessel shown not to have stood by another and given assistance. But, substantially, the law proposed as an universal law would be, on this point, a law not differing materially from the law of salvage as we have it at present in this country.

Although we are not dealing with it to-day, I may add that among the work already done by the International Maritime Committee, there remains a draft code regarding jurisdiction in cases of collision.

Now we come to one very important matter on which those present are working to give the benefit of their judgment. I refer to the law relating to the limitation of shipowners' liability. Substantially, as the law stands, we in this country still recognise the principle of a responsibility of the shipowner as employer of those whom he puts in charge of his ships, but in cases which are in the nature of wrong and not of contract, the responsibility of the shipowner, putting the matter in the simplest form, is limited to 8*l.* per ton where the claim is for damage to property only, an 15*l.* per ton where there has been loss of life or injury to persons. Well that is not the law on the Continent. We, in having that personal liability and that system of limitation, have been alone. Leaving out

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certain differences, not unimportant from the lawyer's point of view, but not important from that of the merchant and shipowner, there is on the Continent and in the United States a general assent to the principle that the venture of the sea property is that to which all who deal with the owner through that property should look to as their fund for compensation. In the event of collision the value of the wrong-doing ship represented the limit of compensation, and if the wrong-doing ship goes to the bottom there goes to the bottom also the only source from wich compensation for injury can be drawn. I am not going to discuss the merits of the one system or the other. This matter was discussed at the London conference, and received very important contributions. It was discussed later at Paris, at Hamburg and at Amsterdam. The proposition first accepted by the conference at London, on the motion of Mr. Mc Arthur supported by a valued member, Sir John Gray Hill, is a compromise between the two views, and one which in the opinion of the conference would on the whole work well. That compromise is embodied in the code wich comes before you on one point for discussion. A valuable summary of the proceedings of previous conferences, compiled by Mr. A. R. Kennedy, sets forth the stages of the discussion. The final stage has been the adoption of this treaty which embodies the view that the shipowner who is proceeded against should have the right, if he pleases, of substituting for the claim the *res* itself, or its value, payment of an indemnity limited for each voyage to 8*l*. per ton of the gross tonnage of his ship. That is accepted. The position of English law, as I have always understood it, is that the limit of liability might, as it were, be called upon several times even for the same voyage, if there were a succession of collisions. Here it is a limitation for the one voyage — for the whole

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of it — which covers the whole, and if for several collisions or mischief caused during the voyage there is a claim upon him, and he does not, in the words of the article itself, obtain freedom from liability in the manner provided in the first article of the code, which is, as you will see, a limitation to the ship or its value at the end of the voyage for indemnity due — if he does not avail himself of that he is entitled to say « For 8*l.* a ton I am responsible, and beyond that I am free. » As regards limitation of liability for life claims we need not discuss that matter here. Probably everybody will be of opinion that any proposal of reform as to life claims is wisely omitted from this code. While the resolutions of principle previously passed had been approved of, nevertheless several other questions have been left open at Amsterdam for the next conference — that is this conference. — Mr. Mc Arthur pointed out that the first article of the draft treaty has gone further in its terms than has been the case formerly, and, after discussion, the conference evidently felt at Amsterdam as I am informed, that this question has still to be reserved. The injuries done for which compensation can be claimed may be injuries arising out of breach of contract. They may be injuries in the strict or proper nature of wrongs or torts. The view on the Continent, speaking again generally — I am not saying all the legislation is exactly identical in all these countries, — is clearly expressed in the language which was given by Dr. Boyens, of Leipzig, the conference at London on this subject in 1899. — « It seems to me essential, he said, to know to what extent the liability of the shipowners is to be discussed here. According to English law the shipowners' liability is only limited to where damage to property and persons on board of ship is done, without the fault of the shipowner, during, or in consequence of,

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a sea voyage. It is true in this respect, there is no differ ence whether the damage happened to such persons as have by agreement entrusted themselves (as passengers) or their property (as interested parties in cargo) to the ship, or whether the damage has been caused to other ships, and the persons or things on board the same — that is to say, by *tort* (delict). The law of the Continent goes further. It gives the shipowner liberty to limit his liability with regard to all liabilities arising out of such agreements and contracts as the master may have entered into on behalf of the shipowner, according to his authority, with the only exception of the claims for wages. Thus, for instance, there is a limitation for liabilities originating by charter-parties which have not been accomplished by bills of lading as to goods which have never been shipped on board, or by repairs and supplies. » Stopping there, there being that difference, there is no doubt what was carried at the London conference as the final basis of agreement — if you look you will see — was a resolution which was read to the conference and which was in these terms : « In case of casualty arising from improper navigation the shipowner should be permitted, without enlarging his present liability under British statutory law, to discharge himself for loss or damage to property, whether afloat or on shore, by abandoning his ship and freight. » That is what is embodied in the draft treaty, but there is something more embodied. There has been introduced a form of expression in the first article which goes beyond any question of casualty arising from improper navigation, namely, what I may call the larger view of the shipowners' immunity has been apparently embodied in the text, and it is open to this conference to express by vote whether or not they approve the extent in which this limitation now stands, settled so far as regards the acceptance by the

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conference. There must be at some time an end to discussion and voting. The question has been finally settled as to whether or not we should come to the agreement which unquestionably has been come to, namely, of accepting what I may call the optional system, taking, as the basis of limitation, the value of the wrong-doing ship as it exists *in specie* after the collision, or rather at the end of the voyage, but bringing in the English principle as a maximum limit by giving an option to the shipowner to pay 8*l.* per ton on the gross tonnage of the ship. Therefore what I want the conference to understand upon this matter, is that while there can be no recision of that which has been solemnly accepted as the principle of the draft-treaty of which the conference would approve, on the basis of liability beyond the point which I have mentioned, it is desired that especially for the encouragement of business, whether of merchants or shipowners, or those who are in marine insurance, that they should express their views here, and give the great weight of their opinion one way or the other — as a matter of opinion in regard to this change. If instead of the British shipowner being liable to the extent of 8*l.* or 15*l.* per ton, according to the Merchant Shipping Act, when the foreign owner is practically only liable *in rem* if the change were made which is embodied in this treaty, adopting in the first place the view of other countries who are practically unanimous, but still reserving as a matter of justice — and I may say it is said by them a matter of justice to us — the option of the 8*l.* a ton — the same law would be recognised by all countries, whereas at present the British shipowner may find himself in this position that as a wrongdoer with a valuable ship he may be held liable in a foreign Court for the full extent of that valuable ship which has done damage through wrong navigation,

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and find himself, if the ship is of little value in that position — which of course is the worse for himself — he may find himself refused, when it is the interest of the plaintiff, the limitation of 8*l*. a ton, which his law would give him, and at the same time unable to enforce in his Courts any corresponding law against the foreigner. That being so, we want to have here your views, and for this reason. Without venturing to criticise — it would be a most improper course to pursue — without venturing to do more, I respectfully suggest that the matter is one worthy of consideration. It is, of course, important, so far as is possible to get the expression, in a great port like Liverpool, of the opinion of business men. If anything is to come out of the work of a conference like this, it can only come ultimately by the approval of the Governments, and the proper influence upon Governments in such an important matter as the limitation of shipowners' liability — unquestionably a matter of very signal importance, and to which Governments would naturally look — is naturally the opinion of those whose interests are most intimately concerned. There has been a division of opinion in this country on the matter, and apart from the special question of the extent to which that limitation should apply, it is wished — and I shall give every opportunity as chairman to members of this conference — that business men of this country should express an opinion upon the larger question, and to give reason for that opinion. The treaty as it stands is as follows :

(*The President then proceeded to read the draft-treaty on Limitation of Shipowners' Liability. Pursuing his address, he said :*)

Now gentlemen, besides this subject of limitation of liability, we have two others on the programme. One of these subjects is, no doubt, a very important one, namely,

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the proposed draft-treaty on Maritime Mortgages and Liens on Ships. It has been felt by many men of business, as well as lawyers, that at present there is a difference which is of considerable importance and greatly embarasses a great many of those who are concerned in mercantile ventures. With regard to our own law, I think those who take an interest in the work of this conference cannot do better than refer to the very clear and admirable report upon that wich has been given us by our friend Mr. Carver, who has taken so deep an interest in the work of this Committee for many years past, and has greatly facilitated our consideration of this matter by his report as regards English law. There are also, as you will find from reports — previous reports — views given as to some of the laws existing upon the subjects in foreign nations. If we can come — after dealing with the draft-treaty clause by clause — if we can come to an agreement with regard to this matter of mortgages and liens on ships, we shall have done, it is felt, a great deal to enable a merchant or a shipowner to say exactly to what extent the various obligations that may arise in the work of the carriage of goods or persons by sea, to what extent the ship, or that which the ship carries, may be rendered liable, and which kind of claims shall relatively have an advantage over others. I shall not anticipate the discussion upon that point. You have all got in Annexe 2 the draft-treaty which is submitted for your consideration. It has not been submitted to any nor have there been, owing to time, amongst other things, any meetings of the sub-committee which was nominated by the Permanent Bureau in accordance with the wish of the Amsterdam Conference, but there has been drawn up and communicated by letter to members of that sub-committee the draft-treaty which is here, and which has already been the subject of consideration in regard to

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the law of particular countries. It is, of course, I need hardly say, necessary, in dealing with this matter, that we should try to meet one another as much as we can, not to be over-nice with regard to small differences or small points of preference, but, while not giving way upon that which we consider fundamentally necessary because fundamentally just or obviously the only right policy, while not giving way upon such matters, to give way as much as we reasonably can to any other view which is obviously the preference of a majority of other countries, however much we may have been used or accustomed to our own. And I am quite sure that other countries in dealing with this will remember also the great stake which we have in all these matters, the great experience which our interests have given us, developed by trial from time to time, and will not be unwilling, on any point on which there is a strong body of English mercantile opinion in one way — will not be unwillung on their part to consider favourably a view wich may not happen hitherto to have been their own.

With these words I propose to ask you to commence the practical work of the day, and I leave to one sentence the only other matter on the agenda, if we can reach it. It is that there should be a discussion on the question of freight. I think all will recognise — I do not at all prejudge your opinion — that it will be a difficult and complicated matter, because so many questions relating to freight are questions which you cannot disentangle from the municipal law of a particular country, and what is called, I see, by some speakers, the common law of a particular country. In other words, it brings this conference into contact with questions which may not properly be strictly called questions of maritime law. However, it is thought some attempt should be made — there are some members of the conference who think that

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strongly — and if we have time it is proposed, after dealing with this first question with regard to the limitation of shipowners' liability, and the question of mortgages and liens, to approach at any rate a preliminary discussion upon the question of freight.

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I ought to have added that according to a precedent, which I understand has always been followed, I must ask gentlemen who speak, as nearly as possible to limit their periods of speech to ten minutes, subject, of course, to the wish of the conference in any case to hear them longer, and, also, I hope that any proposal in the form of motions or amendments will be put in writing and handed in to the secretaries, because otherwise it is impossible accurately to deal with the business. Thirdly, I should suggest — that is entirely for the wish of the speaker — that the speaker kindly come up to the tribune to speak where he could be heard easily by everyone in the assembly. I think it would be for his comfort as well as everyone who hears him.

(*Traduction orale par* M. Gow).

M. Kennedy a donné tout d'abord un résumé historique des différentes conférences, mais il a ajouté qu'au point de vue de notre assemblée ici, il n'est pas nécessaire de reprendre l'histoire de notre œuvre avant la conférence de Londres. A cette conférence, on a abordé pour la première fois la discussion des grands sujets maritimes soumis à cette assemblée ; en premier lieu les lois d'abordage en mer, ou dans les eaux territoriales, ou lorsque l'un des navires au moins est un navire de mer.

Il a été rédigé un avant-projet de traité qui a servi de base à l'examen de la question, par une conférence diplomatique réunie en février de cette année ; conférence qui sera continuée en septembre prochain. Jusqu'à présent, le Gouvernement anglais et le Gouvernement allemand ne sont point représentés à cette conférence.

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Le projet soumis à cette conférence diffère quelque peu de la loi anglaise. Lorsqu'en Angleterre, les deux navires sont en faute, le dommage est divisé également entre les deux navires. A l'étranger, au contraire, la répartition se fait conformément à la gravité des fautes. Il y a donc là une différence de principe.

Il y a encore une autre différence, c'est que la présence à bord d'un pilote obligatoire n'exonère pas l'armateur de sa responsabilité. Enfin, l'avant-projet stipule qu'il n'y a pas de présomption de faute au cas où l'un des navires ne porte pas secours, dans un cas d'abordage.

En ce qui concerne la question de la limitation de la responsabilité des armateurs, qui est soumise à nouveau à la présente réunion, on sait qu'il y a une grande divergence entre la loi des Etats-Unis et du Continent et la loi anglaise. Suivant la loi anglaise, cette responsabilité est pour chaque accident de navigation fixée à £ 8 ou £ 15 par tonne, tandis que sur le Continent et en Amérique, le propriétaire de navire a toujours la faculté d'abandonner le navire et le fret et de se libérer ainsi de sa responsabilité, pour les fautes commises et les engagements pris par le capitaine.

M. le Président a dit qu'il ne veut pas anticiper sur la décision de la conférence, qui aura à examiner si, en dehors des accidents de navigation, elle entend limiter aussi la responsabilité des armateurs pour les engagements contractés par le capitaine. Il rappelle que les conférences précédentes circonscrivent dans une certaine mesure le débat que la conférence peut actuellement aborder. Il fait en outre observer que fort sagement, l'avant-projet à discuter écarte de statuer sur la responsabilité en cas de mort de personnes ou de lésions corporelles.

M. le Président a ajouté qu'il y avait encore deux autres sujets à l'ordre du jour : d'abord, la question des Hypothèques et privilèges maritimes sur laquelle il y a un travail fort intéressant de M. Carver au sujet de la loi anglaise ; ensuite, les conflits de loi en matière de fret ; mais il est à craindre que l'on ne pourra pas parvenir à une solution complète de ces questions compliquées, à cette réunion-ci.

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M. le Président mentionne que conformément aux règles suivies jusqu'à présent dans ces conférences, — et sans que cela soit une règle absolue, l'assemblée ayant toujours le droit d'en décider autrement, — les orateurs ne parleront que pendant 10 minutes. Il a ensuite exprimé le désir que l'on ne parle que de la tribune.

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Limitation of shipowners' liability

Limitation de la responsabilité des propriétaires de navires

General discussion. — Discussion générale (1)

René VERNEAUX (Paris). — MM. Sur cette question capitale de la Limitation de la Responsabilité des Propriétaires de Navires, je demande la permission de présenter quelques observations, non seulement au nom de l'Association Française de Droit maritime, et au nom des Messageries Maritimes, mais également au nom du Comité de direction du Comité Central des Armateurs de France, ce grand groupement qui s'est formé il y a quelques années, sous la présidence de M. André Lebon, ancien Ministre.

En France, nous estimons que le Comité Maritime International a posé un principe, à Londres, qui est véritablement un progrès. C'est ce qui résulte de la comparaison des deux systèmes en conflit et qui se trouvent corrigés l'un par l'autre, grâce à la solution de Londres.

Nous reconnaissons volontiers que le système continental a ses défauts ; il a des origines très anciennes et fut adopté en 1807 en France par le législateur. Mais ce système ne répond plus à la pensée du législateur de cette époque.

Autrefois, au commencement du 19me siècle, il y avait peu de différence entre la valeur des navires circulant sur mer, peu de différence dans la construction et le coût. Au

(1) See the text of the draft-treaty on page 1.
Voir le texte de l'avant-projet à la page 1.

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contraire, au commencement du 20me siècle, nous avons des disproportions énormes : d'une part les cargo-boats et les voiliers d'une valeur modérée ; d'autre part, les magnifiques et immenses steamers qui transportent des passagers et qui atteignent une valeur de 800, 1000, 1200 francs par tonne. Il y a donc là aujourd'hui une disproportion qui n'était certainement pas dans la pensée des anciens législateurs ; un armateur qui met en service un navire excellent, bien construit, qui présente toutes garanties au point de vue de la sécurité, peut encourir une responsabilité énorme parce que son capitaine aura commis une faute nautique très légère. C'est pourquoi il importe que ce système soit corrigé. Dans le système continental, des valeurs aussi élevées que celles que je viens d'indiquer ne doivent pas entrer en ligne de compte ; nous désirons corriger ce défaut par l'adjonction de la limite anglaise.

D'autre part, on préconise d'adopter simplement le système anglais. Mais il s'en faut que cette règle aboutisse à un résultat, dans le sens d'une certitude de dédommagement pour les créanciers. Aujourd'hui, il est possible de constituer un navire en une société à responsabilité limitée. C'est le système de la « Single ship Company ». Un navire forme tout l'actif de la société. Si ce navire est au fond de l'eau, les créanciers sont sans recours et par conséquent, les créanciers de ce navire sont dans la même situation que les créanciers continentaux. Sans doute, on dira qu'il y a des assureurs et que les créanciers peuvent se retourner contre ceux-ci, mais cela n'est pas absolu, car en bien des cas les navires ne sont pas assurés ou le sont pour moins de £ 8 ou £ 15 par tonne.

Nous voulons donc volontiers adopter le système britanique, mais comme limite de responsabilité à ajouter au système continental. De cette façon, nous avons, je pense,

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un système qui est bien équilibré et qui donne satisfaction aux différents intéressés.

Je désirerais indiquer la formule donnée a ce système par l'Association Française. Nous avons rédigé la formule suivante :

« Art. 1. — Le propriétaire de navire n'est pas tenu personnelle-
» ment, mais seulement sur le navire et ses accessoires afférents au
» voyage :

» 1° des faits du capitaine, de l'équipage ou de toute personne
» assistant le capitaine dans le service du navire ;

» 2° de l'exécution des contrats rentrant dans les attributions légales
» du capitaine et conclus soit par celui-ci, soit en son nom par toute
» autre personne, même par le propriétaire du navire ;

» 3° de l'état du navire, quant aux vices cachés, s'il a été fait toute
» diligence pour que le navire soit à tous les points de vue en bon
» état de navigabilité.

» Art. 2. — Pour l'application de la disposition précédente, les
» accessoires du navire comprennent :

» 1° le montant brut du fret et des prix de passage, même payés
» d'avance, sous déduction toutefois des dépenses relatives à l'expé-
» dition ;

» 2° les sommes dues ou payées pour contribution d'avarie com-
» mune, pour prix d'assistance ou de sauvetage, ou pour réparation
» de dommages quelconques.

» Les indemnités dues ou payées en vertu de contrats d'assurance
» sur le navire ne sont pas considérées comme des accessoires du
» navire.

» Art. 3. — Le propriétaire du navire peut substituer au navire sa
» valeur à la fin du voyage ou le montant de son prix d'adjudication,
» en cas de vente forcée antérieure à la terminaison du voyage.

» Art. 4. — Dans tous les cas, le propriétaire a la faculté de libérer
» le navire et ses accessoires par le paiement d'une indemnité limitée,
» pour chaque voyage, à 8 livres par tonne de jauge brute de son
» navire.

» Art. 5. — Les dispositions qui précèdent s'appliquent aux res-
» ponsabilités relatives aux dommages causés aux biens, de quelque
» nature qu'ils soient.

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» Elles s'appliquent aux responsabilités corrélatives à l'obligation » d'enlever l'épave du navire, en cas d'échouement.

» Elles ne s'appliquent pas à l'obligation de payer les salaires du » capitaine et de l'équipage, laquelle est réputée personnelle au » propriétaire. »

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NOTA. — L'Association française émet en outre le vœu qu'en cas de mort d'hommes ou de blessures résultant de fautes engageant le navire, le propriétaire soit tenu d'une responsabilité supplémentaire spéciale à l'égard des victimes (par exemple de 7 livres par tonne de jauge brute).

Si nous nous sommes écartés un peu du projet du Comité Maritime, c'est que nous avons cherché à éliminer tout ce qui n'est pas essentiel et à ramener le système à une formule excessivement simple.

De cette façon, plus de complications, pas de difficultés à admettre pareil système

La loi détermine un certain patrimoine d'exécution et le propriétaire pourra se libérer par une somme de £ 8.

Il y a d'abord des considérations économiques en faveur de ce système. Pour nous c'est un système de progrès, favorable aux navires de grande valeur. Personne n'y peut rien objecter. Il n'est pas bon de faire correspondre la responsabilité à la valeur des navires, il vaut mieux encourager l'élite des navires.

En second lieu, il y a là un avantage considérable en pratique. Quand une collision se sera produite, le propriétaire pourra immédiatement libérer son navire en donnant une caution pour la somme indiquée à l'avance par la loi et de cette façon, le navire pourra aussitôt reprendre la mer ; il n'y aura pas de retard et les intérêts du propriétaire seront sauvegardés.

Enfin, nous aurons une parité de situation pour tous les

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armateurs. Un armateur peut facilement se mettre sous un régime qui équivaudrait à une faculté d'option. Comme je disais déjà tantôt beaucoup de navires sont constitués en société anonyme. Si le navire est perdu, c'est absolument au point de vue du créancier, comme si ce navire avait été abandonné suivant la loi continentale.

Je me permets donc d'insister beaucoup au nom de l'Association française, des armateurs français et des Messageries Maritimes, pour que vous adoptiez ce système sur les bases votées à Londres, à Hambourg et à Amsterdam par le Comité Maritime International.

(*Traduction orale par* M. Gow.)

M. René Verneaux remarked that the Continental system was adopted at a time when there was verry little difference in the value of ships then doing the work of the world. That state of affairs continued up to well in the nineteenth century, but now everything was changed in consequence of the change of style of tonnage which was doing the work of the world. He pointed out that in consequence of that change there was really a difference of liability between that borne by the owner of small vessels or of vessels which had not very high value, and that which was imposed upon owners of large, fine vessels, particularly those engaged in passenger work. In consequence of that, the shipowners of France had felt that the old plan of abandoning the vessel to discharge in full her whole obligations had ceased to be one which was just towards them ; the owner being often put in this way under increased liability. The French owners had been impressed by the method of solving the difficulty adopted in England, that of the single-ship company, which had been discussed at previous conferences. According to the reports, they were further impressed in France with the English system of a fixed maximum of liability, and they had discovered that in order to go ahead in proper progress in their economic development, a new form of liability was required. In consequence a new form had been devised, the principles of which were as follows : — First, the shipowner is not personally liable, but he is only liable for the ship and accessories which belong to the voyage, for the acts of the captain, of the crew or of those assisting in the service

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of the ship; for the execution of the contracts which fall upon the legal rights of the captain and concluded by him, or in his name, by any other person for the owner of the ship — if all diligence has been shown to keep the ship in a good state of navigation. The second article defined the various accessories mentioned in the first article. The third article provided that the owner may substitute for the ship its value at the end of the voyage, or the amount of its price as fixed in a forced sale previous to the end of the voyage. Article 4 provided that in every case the owner of the ship has the permission of freeing the ship and its accessories by payment of an indemnity limited for each voyage to 8*l.* per ton on the gross tonnage of his ship.

This, said M. Verneaux, was pratically the English system, but the advantages of it from the French point of view were that the adoption of some system of option such as this would enable the owners of a large fine ship to navigate without undergoing an undue responsibility, and would still not impose upon the owner of an inferior class of vessel, in fixing the amount of indemnity at 8*l.* per ton, or 200 frans per ton, which might bear hardly upon him. One great advantage of a maximum of 8*l.* per ton, M. Verneaux pointed out, was that it enabled the owner at any time after an accident to give bail for the full amount of his liability, and this enabled him to proceed on his voyage without being detained for any length of time for the settlement of legal differences. In consequence of these things, speaking in the name of the large body of French owners, he submitted that the system of option of the value on which the responsibility of the ship was fixed, was one which was of progress, and therefore ought to commend itself to this committee.

Dr. Heinrich Finke (Bremen).— In dem Vertragsentwurf handelt es sich um zwei Fragen, die erste Frage betreffs der Limitation der Rhederhaftung, und die zweite mit Bezug auf solche Fällen wo diese Limitation der Rhederhaftung anzuwenden sei.

Was die erste Frage anbetrifft sind wir der Meinung dass ein internationales Einverständniss mit Bezug auf die Option für den Rheder zwichen die beiden Systeme, nothwendig ist. Es ist doch zweifellos dass es nimmer gelingen wird ein dieser beiden Systeme über die ganze

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Welt als Gesetz zu stellen. Ich sage eine Option zwischen zwei Systeme, denn nach meiner Ansicht ist die Differenz zwischen das Deutsche Recht und das Französiche Recht gar nicht gross; praktisch ist das Princip dasselbe in den beiden Gesetzen.

Auf den ersten Punkt sind wir mit dem Verstragsentwurf einverstanden.

Aber auf den zweiten Punkt kommt die Frage in welchen Fällen die Limitation stattfinden wird.

Soll die Limitation auch ausgebreitet werden auf Vertragsverhältnissen? Dies ist in erster Linie im Streit mit dem Englischen Gesetz. Zwar besteht eine solche Ausdehnung der Beschränkung in den nationalen Gesetz Deutschlands, und deshalb können wir Deutscher dagegen nichts anwenden; aber es erwachsen sehr anhebliche Bedenken wenn man sich die Frage vorliegt ob es auch angemessen sei über die hier vorgeschlagene Ausdehnung der beschränkten Haftung auf Vertragsverhältnisse eine internationale Verständigung zu erzielen.

Das Comité Maritime International hat es nicht zur Pflicht ein internationales Einverständniss auf alle Fragen zu Stande zu bringen; wir sollen nur da eingreifen wo es ein praktisches Bedürfniss giebt.

In Kollisions- und Hilfeleistungs-Fällen ist unsere Arbeit von grosser Bedeutung und ist es auch ausser Zweifel dass auf diesen Punkt eine internationale Verständigung nothwendig ist. Wir sollen aber, für den Vertrag der die Rhederhaftung beschränken soll, nicht vergessen dass die Vertragsparteien im Stande sind voraus zu stipulieren welches Gesetz anwendbar sein soll. In ihren Kontrakten können sie solche Klausel einführen wie sie es wünschen, und sie wissen also genau welche die Folge ihres Abschlusses sein können. Dies ist aber nicht der Fall für solche

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Parteien die imfolge einer Kollision oder einer Hilfeleistung in Rechtsverhältniss kommen.

(*Verbal translation by* Dr. ALFRED SIEVEKING).

Dr. FINKE pointed out that the draft-treaty consisted of two parts, the first part of which dealt with the liability of the shipowner, and the second part with the cases to which this limited liability would apply. As to the first part, he said on behalf of Germany that they perfectly agreed with the system inserted in the draft-treaty. That was to say, it was a system of giving the shipowner an option between three systems, or practically between two systems — namely, the British system and the Continental system — because the difference between the French system of abandonment and the German system was not very great. As to the second part of the draft-treaty, he said there were very serious doubts indeed as to the possibility of extending it to matters of contract. They were not there to pass a poor-law for persons who were wantonly poor ; they were only there to mitigate acts of God, and there was not the slightest necessity to make a law for persons who were able to make the law themselves. If the cargo-owner went to the shipowner and said that he wanted his goods to be forwarded to some port of destination, and the shipowner went to the bill of lading and said, « Well, these are my conditions, » and the shipowner wanted other clauses inserted he could just say so. Therefore there was no necessity for extending this draft-treaty to matters of contract. Dr. Finke added that so far as the Germans were concerned they would have nothing against it, because it would be a codification of their own law. It was entirely different to advise Governments to make a law an international law. Other points would also have to be considered, especially the one alluded to already as to whether it was necessary to make a law where the parties were able to regulate the matters between themselves.

Dr. LOUIS BENYOVITS (Fiume). Je me permets de dire quelques mots au sujet de la question qui nous occupe : la responsabilité du propriétaire de navire à raison des faits et actes du capitaine. En règle générale on réduit cette responsabilité à raison de la circonstance que le

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propriétaire de navire n'est pas état de surveiller et de protéger ses intérêts quand le navire est en route. C'est évidemment juste.

Supposons une collision entre deux navires ; la faute ou plutôt l'erreur des deux capitaines vient d'être établie. Est-ce qu'il ne faut pas prendre en considération que ce capitaine est en lutte perpétuelle avec les éléments, qu'il peut arriver un moment où ses forces, physiques comme morales, se sont trouvées épuisées, qu'il ne peut plus contrôler tous les évènements qui peuvent survenir en mer ; c'est donc en limitant la responsabilité qu'on a voulu atténuer la grave situation du propriétaire de navire et du capitaine.

Mais c'est ici que j'arrive à l'objet de mon observation. Est-ce qu'il n'y a pas les mêmes motifs, les mêmes circonstances spéciales, lorsque le propriétaire lui-même conduit son navire ? Pourquoi donc ne pas étendre la limitation de la responsabilité au propriétaire-capitaine ? Notez qu'en faisant cette demande, j'entends seulement la limitation de la responsabilité pour ce qui concerne la conduite navale du navire, mais pas les faits juridiques. On fera l'objection qu'avec ce système on ouvrira toute grande la porte aux abus. Il y a certes des cas où la fraude serait possible ; mais enfin en pareil cas il y a dans tous les codes civils un article qui devient applicable.

On doit encourager la navigation parce que personne n'aimerait à risquer toute sa fortune dans une aventure de mer. On objectera encore que c'est déjà une règle généralement acceptée ; mais enfin, il y a des exceptions à cette règle générale. Il y a même dans le code français un article 216 qui dispose qu'en cas de naufrage maritime, le propriétaire de navire peut se libérer même envers l'État de toutes dépenses, réparations, etc. Donc, là on accorde

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le bénéfice de l'abandon même pour les sommes dues à l'État.

Aujourd'hui, la navigation se trouve entre les mains de puissantes compagnies à qui il importe fort peu que la limitation de responsabilité soit accordée au propriétaire-capitaine. Je prends donc la parole au nom des petits propriétaires-capitaines, dont le petit navire forme toute la fortune. C'est pour eux que je demande que la limitation de la responsabilité soit aussi applicable, à l'exclusion des cas de dol.

Permettez-moi de dire encore quelques mots. On discute en ce moment la question de savoir s'il faut accepter le système anglais ou l'abandonner. J'avoue volontiers que le système anglais est raisonnable et juste à certain point de vue, parce qu'avec ce système, le propriétaire de navire lésé peut toujours recevoir quelque chose, alors qu'avec le système continental de l'abandon il peut arriver quelquefois que le propriétaire de navire lésé ne reçoive rien du tout.

Mais puisque le système de l'abandon est accepté depuis si longtemps, et dans tous les pays du monde sauf l'Angleterre, je crois qu'il serait à peu près impossible de le faire abandonner maintenant par tous ces pays.

Je crois donc que nous ferions bien d'approuver le principe de l'avant-projet de traité soumis à cette conférence. Mais je me permettrai de faire une observation sur l'article 4. On tente d'unifier les différentes lois maritimes, et d'après cet article 4, on voit qu'au lieu d'un seul système, on en fait deux.

Je suis d'avis que cet article ne peut pas rester, parce qu'avec ce système, le propriétaire responsable a le droit de choisir le système le plus favorable aux dépens du propriétaire lésé.

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Toutefois, je m'inclinerai volontiers devant la majorité si elle est de cet avis.

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* *

Gentlemen, I beg leave to summarize in English what I have said.

Article 4 allows the wrong-doing shipowner to chose between two systems, and no doubt his choice will fall on the system which is the most favourable to himself; this does not attain our aim of unifying all legislations, as it leaves still two systems. I am however ready not to insist if the majority thinks I am wrong.

I should however desire that the limitation of liability should be extended also to those shipowners who are at the same time their own captain, and I do not understand why they should be deprived of the limitation of liability of which richer owners have the benefit. What is the reason why limitation of liability is granted to shipowners? Because when a ship is on a voyage, the owner is not in position to look to it and protect his interests. Further, we must not forget that a captain is always struggling with sea and wheather and there may come a moment when the physical and moral powers of the master are quite exhausted and when he is no more able to act as he should wish. By limiting the liability, a remedy was intended to be brought to this most grave situation of shipowners and of masters; but these very reasons exist as well in favour of the master-owner as in favour of other owners, and I should like to provide that the limitation of liability will extend also to masters-owners provided there be no fraud committed.

Mr. Leslie Scott (Liverpool). Mr. President, I wish to put before the conference one or two figures before coming to the general question of the limitation of shipowners' liability. The point which I wish to bring before the meeting is this — that on the present existing differences in the measure of liability, we Britishers are giving a very substantial bounty to those nations who have the principle of abandonment of the ship, which is a bounty

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which increases their power of competition with us, to our detriment. I believe that the representatives of foreign nations on this Committee are good enough to say that they are willing to give up the bounty for the sake of having the law regulated on an international basis. That is, of course, very good, although at the same time, if we can, we ought to get rid of this discount under which we are labouring. Now the figures in question are very short. We have a limit of liability of no less than 8*l.* per ton. The average value in the market of British shipping before collision — that is to say the sound value — is probably on an average of all British shipping something under 6*l.* per ton. Therefore we are on an average liable for something like 2*l.* per ton more than the average value of our shipping. The average liability of foreign nations, which, of course, is measured by the average value of foreign ships which are in fault before collisions, and so on, is the average value of these ships by collision, and included in that average there is an allowance for the percentages which actually are lost after collision. I think it will be probably accepted as a matter of common knowledge that the average sound market value of foreign shipping is not, at any rate, more than the average sound value of British shipping. Probably it is less, owing, for instance, to the large number of old British ships, which, when they cannot be run profitably under the British flag, possibly for this amongst other reasons, are transferred to foreign flags and run under those flags, and of course to that extent go to diminish the average value of foreign shipping. If the average sound value of foreign shipping under the abandonment rule be taken at, we will say, 4*l.* or 5*l.* a ton, and you take off, we will say, 20 per cent. or 25 per cent, for the average depreciation in value owing to damage, including total losses, you get an average of

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foreign value of something like 4*l.* a ton. So that the average foreign liability for collision is 4*l.* a ton as against the English limitation of 8*l.* a ton — in other words, double. Those gentlemen who are engaged in shipping business of one kind or another will no doubt be familiar with the fact that in insuring the low value in English ships against risk of collision — collision liability — underwriters call as a rule either for a special premium for the 8*l.* limit or ask for an increased value to be inserted in the policy. That, of course, is an instance of the discount under which British shipowners low value ship labour. As regards these figures, I will quote authority for the figures I have given. The total British tonnage is about 14,000,000. Of that about one-seventh are liners, and the liners are worth probably something less than 10*l.* per ton market value. Those figures are stated in the evidence taken before the Steamship Subsidies Committee in 1901, and printed on Aug. 1, 1901, and were given by Mr. Norman Hill, the secretary of the Liverpool Shipowners'Association, and appear there on page 109. Questions 1809 and 1810. « There are 24 companies. Those 24 companies have share and debenture capital, and reserve funds amounting to 20,725,000*l.* They have got a tonnage of 2,007,000, and the average dividend paid for the last five years is 4-8-10 per cent. It works out at 10*l.* per ton, if you divide the total of the share and debenture capital and reserve funds by the total tonnage ». Then there is another one-seventh liners at 10*l.*, and another one-seventh sail, which may be taken at a fair value of 3*l.* all round. The remaining five-sevenths may be treated as general cargo-boats of a general average value of 5*l.* 10^{s}. Those figures are for steamers, and give a total average for the whole British tonnage of 5*l.* 14^{s}. As a check upon these figures, I, this morning, asked Mssrs. Kellock and C^{o}., the well-

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known ship valuers and salesmen, to give me half-a-dozen instances of fair average cargo-steamers sold by them during the last six months, and they have done so, taking steamers of from 5,000 to 6,000 tons deadweight capacity. The actual average of these half-dozen steamers is the precise figure 5*l.* 14^{s}. which was calculated out upon Mr. Norman Hill's figures, showing that the figure 5*l.* 14^{s}. is very accurate. I think that Mr. Ortmans, the Maritime Director of the Société Cockerill, Antwerp, will be able to give us very shortly the figures for the constructional cost and market value of old vessels for foreign tonnage. I think he will be able to give us that immediately. If these figures are correct, it shows clearly that there is a substantial bounty given to foreign shipping which British shippping can abolish immediately by putting us on the same basis of liability as foreign shipping.

(*Traduction orale par* M. Louis Franck).

M. Leslie Scott a dit que dans l'état actuel, les armateurs anglais donnent une prime aux armateurs étrangers, étant donnée la différence entre les systèmes de limitation. Cette prime, il se propose de la chiffrer et voici les données qu'il a fournies :

En Angleterre, la valeur moyenne de tout le tonnage *avant* collision peut être calculée à un peu moins que £ 6 par tonne. Par conséquent, comme la limite de responsabilité est de £ 8, les armateurs anglais, à ne les considérer qu'entre eux-mêmes, ont une responsabilité qui excède de £ 2 la valeur de leurs navires.

Si maintenant, vous comparez leur situation et celle des armateurs étrangers, vous arrivez aux données suivantes. A l'étranger, avec le système de l'abandon, la valeur moyenne dont il faut tenir compte, c'est la valeur moyenne *après* la collision, et par conséquent, il faut déduire de la valeur saine le montant des avaries et la perte totale. Or, il semble qu'il n'y a pas d'exagération à réduire de 20 à 25 % la valeur après abordage.

Par conséquent, Mr. Scott arrive à cette constatation que la valeur moyenne dont répondent les navires étrangers, tout compris, peut être estimée à £ 4 par tonne, d'où il résulte par conséquent que comme

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les armateurs anglais sont responsables jusqu'à concurrence de £ 8, leur responsabilité est du double de la responsabilité continentale.

Je ne m'arrêterai pas dans les détails pour répéter d'où M. Scott a puisé ces chiffres. Il les a trouvés notamment dans l'exposé fait par M. Norman Hill, dont vous connaissez sans doute tous la haute compétence, devant la commission royale qui a siégé à Londres. M. Scott a ajouté qu'ayant revu ce calcul et étant arrivé à ce chiffre d'environ £ 6 par tonne comme valeur moyenne anglaise, il s'est adressé ce matin même à une grande firme de Liverpool qui s'occupe du courtage et de la vente de navires en demandant le prix moyen obtenu, et ici encore, il arrive à un chiffre absolument correspondant à celui auquel M. Norman Hill était arrivé, c'est-à-dire exactement £ 5 : 14 : 0

Donc, dit M. Scott, nous donnons une prime considérable aux armateurs étrangers. Or, pour ne plus nous mettre dans cette situation d'infériorité, il suffit de nous rallier au projet qui est actuellement soumis à la conférence.

Mr. Austin Taylor, M. P. (Liverpool) : I regret that I am not able to surmount the bilingual difficulty sufficiently to accommodate all members of this conference, but what I have to say will be said in English, and I hope to make my meaning plain. The shipowners of Great Britain, I think, desire that the law governing maritime commerce should be internationally the same. Of course, they would like to get as much of their own way as possible, but like other sensible people they realise that it is not always possible either on land or sea to get all you want. Therefore, Mr. President, I take it that the shipowners of Great Britain approach this question as business men in a reasonable spirit, desiring an international settlement which will include all nations. You have already pointed out, Mr. President, that there are certain portions of this question already agreed upon by previous resolutions. We understand from you that the shipowners under this agreement — all shipowners — are at liberty to consider their liability fixed at the value of the ship and freight, and as an alternative are to have the option of paying 8*l.* a ton

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in satisfaction of their liability. That, Mr. President, I understand is already agreed in regard to cases arising from improper navigation.

THE PRESIDENT : With this exception of course, Article 7 expressly refers only so far as damage to property is concerned. The question of life is left out.

Mr. TAYLOR : The question of life is altogether excluded from the purview of this treatment. I understand I am correct in saying that, as regards property, the present agreement is that all shipowners are to have as the extent of their liability in cases of improper navigation, not as drafted, but as agreed upon, that shipowners are to take as the limit of their liability for property in cases of improper navigation the value of the ship and freight, or may discharge that liability as an option by the payment of 8*l.* per ton.

THE PRESIDENT : To be strictly accurate, of course, it includes also some other accessories.

Mr. TAYLOR : Of course the indemnities will be garnished — will be brought in for the benefit of the persons damnified. Although they may have their importance we may leave them on one side for the moment. On behalf of British shipowners — to whatever extent this principle of fixing the extent of the liability as to the value of the ship and freight is carried, the British shipowners attach enormous importance to having the alternative of 8*l.* per ton. That must be clearly understood, because they are not prepared to go forward at all in this matter unless that alternative is conceded. Therefore, this draft-treaty only has their approval because it embodies the present practice of

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English law in that respect, and to whatever fortune this treaty may ultimately attain as the basis of international agreement, the shipping interest of Great Britain will only regard it sympathetically in so far as it secures to them the alternative of the payment of 8*l.* per ton. Well now, Mr. President, going to that extent in agreement, what we desire to consider at this conference as business men is how far we can endorse this treaty as drafted? At the London Conference the resolution which was passed approved the draft of the treaty, I think, but left....

THE PRESIDENT : The Amsterdam meeting.

Mr. TAYLOR : The Amsterdam meeting approved the treaty generally, but left the details and drafting to be considered by this conference. Well now, what are the details and drafting which in particular we have to consider? Having arrived at an agreement as regards damage to property arising from improper navigation, how far does this draft carry us beyond that point? Well, on the treaty as worded, I think I am right in saying that where it governs all acts of the master and crew it goes very much further than damage to property arising from improper navigation.

THE PRESIDENT : And also, of course, Article 6, which I did not take up time in reading, expressly includes that the limitation of liability term according to preceding articles will be applicable to contracts, thereby carrying out substantially Article 1. It includes the contractual liabilities, and the meeting left that point to be considered here.

Mr. TAYLOR : Then I think we may all take it that the real difference of opinion, if there be one, on the details

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and the drafting arises in connection with the contractual liabilities. What are those contractual liabilities going to be as affected by this draft-treaty? That is really the point to which we have to address ourselves in order that we may discover the extent of the change which this is likely to make. I speak, of course, subject to correction, but it appears to me that it is very easy to exagerate the extent of the change which would be made in respect of business practice. The contracts that are likely to be the act of the master and crew in British ports would, I think, be few and far between. Owners are not accustomed in this country to let masters and crew act for them in British ports, and therefore, so far as British ports are concerned, we may take it that the acts there will be the acts of the owner, and not the acts of the master and the crew. Then what we really have to deal with are the acts of the master and crew in foreign ports. Those contracts primarily will no doubt be concerned mainly with repairs, supply of coal, and supply of stores and necessaries of that kind. The limiting of liability for such matters as that is one with which the suppliers of those articles are already familiar in the case of foreign vessels, and if this treaty were adopted as an international document, they would have to accustom themselves to the same mode of procedure in regard to British vessels. I think, Mr. President, from the point of view of the British shipowner, no harm would be done by allowing those contracts in so far as they are the acts of the master and crew, to be subject to the same liability as damage to property in the case of improper navigation. I admit, of course, that it would be a change in business practice, but once it was understood that the same rule applied all round, no doubt business methods would adjust themselves accordingly. Rates of freight would adjust themselves accordingly, and

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underwriters would adjust their rates of insurance to meet the changed conditions, and, speaking from the shipowners' point of view, I am bound to say that I do not see where any great harm would arise as far as his interests are concerned. Also as regards the interests of cargo and other interests, once this matter was placed upon a definite footing under an international agreement, they would adjust themselves in some way and protect themselves against what would be to some of them no doubt novel conditions, and gradually the whole business world of maritime commerce would be regulated on one harmonious basis. — Mr. President, I propose under these circumstances to move a general resolution with your consent. I think that it is desirable that we should have something definite before us. If I move this resolution, I am quite aware it will be exposed to criticism, but after all it is possibly better that we should have some definite basis of discussion to which those who have criticisms to urge can address themselves. Therefore, I move — « THAT THE DRAFT AS AN INTERNATIONAL TREATY PLACING THE SHIPOWNERS AND MERCHANTS OF ALL COUNTRIES IN THE SAME POSITION IN REGARD TO THE EXTENT OF THE SHIPOWNERS' LIABILITY, be approved. » I desire, Mr. President, to emphasise the words « as an international treaty. » Unless, of course, this treaty, this draft, becomes an international instrument, nothing is to be gained from any point of view by going forward, but on the terms of this resolution I think we may possibly, after discussion, agree that if internationally all nations can combine to regulate their business practice in regard to shipowners' liability upon harmonious principles, whatever little friction or whatever readjustment is necessary in rates of freight, rates of insurance, or business methods generally, compensation will ultimately be found in the business world by

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finding a much more easy and harmonious method of co-operation. I beg to move this.

(*Traduction orale par* M. Louis Franck)

M. Austin Taylor approuve l'option prévue par l'avant-projet.

Passant ensuite du principe général à l'examen des questions de détail, il dit : « Le point qui nous divise paraît être la question de savoir s'il faut étendre la limitation de la responsabilité, telle que ce traité va l'établir, au domaine des contrats conclus par le capitaine, et où, dit M. Taylor, il me paraît qu'on exagère les difficultés. Que se passe-t-il en ce moment ? Dans les ports anglais, l'armateur lui-même s'occupe des contrats du navire. Pour les ports étrangers, l'armateur se trouve soumis à la loi étrangère. Tout le changement consisterait donc à compléter ce qu'il a lieu de faire ; ce n'est peut-être qu'un effort d'adaptation ; mais cette question se résoudra avec d'autant plus de facilité qu'on a fourni à la pratique une loi uniforme et harmonieuse. C'est une règle internationale plaçant les armateurs de tous les pays dans la même position qu'il faut approuver.

Mr. T. F. Harrison (Liverpool) : I rise to speak on behalf of the Steamship Owners' Association, of Liverpool, an association which comprises some 25 per cent. of the steamship owners in the United Kingdom, and some 50 per cent of tonnage of over 5,000 tons register of the Kingdom, and I have most cordially to support the resolution which has been proposed by Mr. Austin Taylor. Mr. Austin Taylor has given the views of shipowners generally, and I think of Liverpool shipowners in particular, so clearly that it has left nothing for me to add. We feel that it is of the greatest importance, especially to those of us who trade with different parts of the world — to various foreign ports — that wherever we go we should find uniformity in legislation, so that we know exactly what ground we are on, wherever we have to deal with figures that inevitably arise in connection with our trade. The original proposition of letting the risk rest where it fell, we, of course, could not accept. It

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would not be fair to steamers of the high value which our association is most largely concerned in, but since the conference has introduced the principle of the 8*l.* per ton limit, so far as the loss of property is concerned, we feel that we can accord now to the code our very hearty support. As I said before, Mr. Taylor has expressed our views so fully that I need not add anything thereto, but, Mr. President, I beg to second the resolution which Mr. Taylor has proposed.

(*Traduction orale par* M. Louis Franck)

M. T. F. Harrison (Liverpool) a demandé à l'assemblée de seconder la motion de M. Taylor.

M. Harrison a ajouté que son Association représente 25 % de tous les armements de steamers anglais et 50 % de tout le tonnage des steamers anglais ayant plus de 5000 tonnes de portée.

M. Harrison a dit que tant qu'il s'agissait de la proposition primitive tendant à introduire en Angleterre le système continental pur et simple, il n'avait pu s'y rallier, mais que du moment où l'on introduirait ce correctif qui serait la limitation à £ 8, il était entièrement prêt à y souscrire. Il a dit combien l'armateur anglais était profondément convaincu qu'il fallait qu'il y eût une loi uniforme en cette matière.

Il a donc proposé de voter le traité en principe.

Mr. W. English Harrison, K.C. (London) : Mr. President, may I ask a question upon this resolution as I understand it? This resolution is equivalent to a second reading of the treaty as a whole, but it does not preclude me from criticising the drafting, or possibly some of the provisions of the treaty itself, but it is a general approval of the principle of the treaty.

The President : It is more than that. As I understand, it is an approval of what has been done. It is an approval in substance of the whole of the treaty, or what was left of it, by the express vote of the Conference at Amsterdam,

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but in general terms reserving to the conference the settlement of questions of detail in drafting and reserving a clause enabling this question of whether the limitation should be confined to damage done by collision and not extended to contractual liabilities. I have no doubt if there is any mere wording or phraseology upon which anybody wishes to move anything that can fairly come within this wording of detail and drafting, but it is not intended that any question of principle should be left over except this one, which was intended to be covered. That would include Article I., and, as I have said, it would include Article 6, because there again the work is referred to, but after we have finished in the afternoon what may be called the general discussion, we can go through the articles one by one and see whether in the drafting or details any member wishes to make remarks which will lead to an alteration.

(*Traduction orale par* M. Louis Franck)

M. W. English Harrison, par motion d'ordre, a demandé si la question serait entièrement règlée par un vote, ou bien s'il fallait seulement approuver la question de principe, mais en le laissant libre de critiquer la rédaction ou les questions de détail.

M. le Président lui a répondu que c'était plus : c'était approuver tout ce qui avait été fait jusqu'ici, et approuver dans son ensemble le projet tel qu'il avait été fait par la Conférence d'Amsterdam ; mais M. le Président a ajouté que les questions de détail resteraient ouvertes et que cet après-midi on reprendrait les articles un à un pour voir si les membres désirent changer la rédaction sur les questions de détail

Mr. T. G. Carver, K. C. (London) : Mr. President and gentlemen, I do not think we quite understand where we are, but I take it that Mr. Austin Taylor has proposed here to adopt this draft as the right expression of the intention of this conference, and in order to raise the question which I wish to raise, I take it I must propose an

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amendment to that, and in effect that would be an amendment to the draft. I could put my finger, I think, upon the words which I would seek to alter in this draft in this way. I would propose to omit in the second line from the word « crew » to the word « capacity » in the third line, and to add the words « for those acts » after the word « liability » in the fourth line, so that it would read in this way: « When the owner of a ship is held responsible according to the law of the country for the acts of the master and the crew, his liability for those acts is for each voyage limited, » etc. Of course, I am only putting that by way of showing the point I want to raise. It would involve other changes, such as the limitation of Article 6, but it is sufficient for me to indicate it in that way. Now, I do not address myself to any particular matter as regards the principle of this draft, because as I understand, the ruling of the chair is that it is not open to us to do so, that the principle of limiting the shipowners' liability in regard to improper navigation by the master or the crew, and I do not know that the extension from improper navigation to the general word « acts » is one that I would seek to criticise; that principle has been adopted by the conference in previous meetings, and that therefore, it is to be taken as settled. It has been my misfortune, sharing the misfortunes with some few others, to have to appear as the obstructor of the only system of uniformity of which there seems to be any hope. This is against the grain with me to stand here and oppose what are the wishes of British shipowners, and to oppose what seems to be the chance of uniform maritime law. I say it is against the grain utterly with me to do so, but one of the reasons why I do so is because it seems to me that the only chance of uniformity in maritime law is not to press this. We have been working at this subject of uniformity of maritime law since the year

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1898, and there are a very considerable number of the operations of maritime law on which we have been able to come to a complete agreement. There are other operations of the same law on which I think we can still come to a complete agreement, but there is this particular matter which has loomed ahead always, and which is here now. It is that very matter which, in my judgment, will prevent any practicable uniformity of maritime law at all. I say we have come to agreement upon a great many topics. This topic of collision law is very important as also are other topics which will come before you. We have struggled to get the British Government to take a hand in adopting these proposed changes which everybody can accept. In foreign countries, our own country, and everywhere they can be accepted, but the British Government so far has stood aloof and will not take a hand. But I cannot help thinking that there is a strong chance they will do so in the course of time, unless it be that the existence of this proposal prevents them. I for my part feel convinced this will prevent it. I do not believe that any British Government will propose to the House of Commons a treaty based on these lines, and I do not believe that the House of Commons will accept it. But while loyally following the direction of the chairman it seems to me, at any rate, we might do this : We may look into this proposed draft-treaty and see whether any portion of it might be possibly acceptable to the British legislature. I cannot help thinking that if there is a portion of it which might be presented, it is the one strictly limited to their London resolution, confining it to improper navigation. When you come to extend it — as this does extend, I quite agree, quite properly from the continental point of view — when you come to extend it to the engagements entered into by the master, or to the engagements intered into by the owner which he carries out

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through his master, when you do that, you really make the thing impossible, and I cannot myself feel at all convinced by the arguments which I have heard over and over again since I came to Liverpool that, because the British shipowners are agreed about this, or, as it is much more compendiously put, because the business men are agreed about it, that therefore we may waive our difficulties and criticisms and troubles and come to the conclusion that it is the right thing. We have heard a great deal about British shipowners, but, after all, highly important as they are, they are not by any means the community. They are one special class of the community, and, of course, any legislature that has to deal with a subject of this kind will have to legislate not for British shipowners but for the community at large. I have wondered whether shippers are coming here to speak in favour of this principle, but so far we have not heard them. These shippers are a very important section of the community with regard to this matter. But there are, of course, others, too, who are from time to time the creditors of the ships. But still even beyond that there is this : It is a principle of our law with men who meet their obligations that if a man does things or enters into engagements, or carries out his contracts by means of servants, that he must answer for what his servants do; and if he fails to carry out his contracts then he has got to meet the obligations which so arise. Of course, I do not need to prove these propositions which are fundamental propositions of our law.

You have got to show some reason why these propositions should be set aside. You cannot expect any legislature to set aside these fundamental propositions of law for the benefit of shipowners — one particular class of the community — unless you can show some very strong and convincing reason for doing so. What are the strong and

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convincing reasons ? The mere business convenience of a particular section of the community is not a sufficient reason for fundamentally altering the law in their favour. Therefore you must give some other reasons. Well, the one reason, so far as I am able to ascertain, is because you will in that way achieve uniformity of law. Well, I, for one, do profess an earnest desire for uniformity of law — I think it is to some extent rather a theoretical idea, a theoretical desire — and I think it is a thing we ought to achieve if we possibly can. Of the practical importance of this particular matter I am not so very much impressed with. I have no doubt cases of hardship do arise, and with all my heart I would like to see them avoided, but they are not a matter of every day occurrence. It is however, a matter which does now and again arise, in which you have come to the extreme of a man abandoning his ship in order to fulfil his engagements. It is an occasional thing. But still, would you expect, if you were in the House of Commons, that the House of Commons would be convinced of the supreme importance of uniformity of law to such a degree that they would be willing to abrogate in favour of shipowners what I say is a fundamental principle of our law. I confess I do not believe it. Well, there is another argument which may be advanced. It will be said, « Well you have already done it, in this sense, that you have limited it to 8*l.* a ton. » That is quite true, and I suppose that the ground for doing that was that it was said that the risks which a shipowner runs are so great, the possible risks so ruinous, that you must state the limit of that liability, and that liability accordingly was with us originally limited to the ship freight, but our Courts held that that lies on the ship and freight, when sound before a collision instead of after a collision, and it was only later on that that was

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changed into a definite limit. You, the shipowner, may go on getting your traffic, and you shall not be liable for more than a certain fixed amount, but you shall be liable for that fixed amount. Well, that is intelligible, but it cannot be said that you have got to the question of limitation. I mean to say to make it a smaller amount in order to encourage shipowning in England, because shipowning is flourishing to the full. I suppose some may say there is too much shipowning, and therefore that reason won't count. There is another reason. I hope I am not going into the matter at too great length....

The PRESIDENT : No, I am sure the conference will hear Mr. Carver, who has taken so very great an interest in the work from the first.

Mr. CARVER : May I suggest another reason that there is nothing that suggests ruin in these risks, because we know that nowadays, whatever it may have been in the old time, that nowadays there is the system of insurance which all shipowners adopt, and which has the effect that, although they may lose their ship, that does not involve ruin, because, although they have not got their ship, they have got the insurance money which represents the ship. Without wanting to labour the whole of this subject, which, of course, has been laboured before, what I would now direct your attention to is this : Can you expect that the limitation which has been approved in regard to improper navigation — can you expect that it will be helpful in getting that adopted, to couple with it a limitation with regard to the engagements of the owner and the master — their contractual engagements ? I suggest to you, without going any further into my general argument, that that is a mistake, and that you ought to cut that out if you are to get

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your treaty put into such a shape that it will have any chance of acceptance at all. My own strong feeling is this : Go on with the other subjects with which this conference is concerned, press those, make uniform your maritime law in all these matters about which it seems practicable to do so ; do not clog it with this proposal that I believe will render the whole of them impracticable, but let this lie for a time until possible further changes may arise — let this abide until then. There is nothing extraordinary about that proposal. You have already decided to leave undealt with that question of liability for personal injuries and for life. I urge upon the conference to lay this question aside for the time being and take up other matters that we can deal with and which the Government will be willing to deal with, and to get those settled. I am delighted and interested in what we have heard to-day from various gentlemen from France and from Germany, and I think from Hungary. I have been much interested to know that, whereas some years ago the English limit of 8*l.* a ton was tolerated, that now it is sought and that they have come thus far towards us to feel that the privilege of adopting a fixed limit of 8*l.* per ton is a matter of which they will gain and a matter which they desire, and I entirely appreciate and approve, if I may say so, of the reason for it. I cannot see for myself why a man who sends a first-class ship to sea should be liable to a higher amount than a man who sends a fourth-class ship to sea. It seems it should be the policy of the legislature to encourage good shipbuilding and good maintenance of ships, and therefore, I think, if I may say so, I entirely agree with their view that a fixed money limit is a much sounder thing than the value of the ship as the limit. Now they have come towards us in that sense. I have still a hope that they will come towards us in this : That the limit shall be one set before the disaster, and not set after the disaster ;

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that they will come to see that it is not fair to throw the risks of the ship upon the creditors. I stand here in opposition to the British shipowners, because I do think somebody should speak for the creditors — the claimants — and it seems to me radically wrong to say to the creditor, « Now you will get the debts paid, your claims paid, provided my ship does not go to the bottom. » I should say that that was wrong if there were anything more in it, but when I contemplate the fact that that is an ordinary experience of shipowning, and the shipowner will have to be insured, and when his ship goes to the bottom he will have the representation of that ship in his pocket in money — then it seems to be doubly wrong when you argue it as a matter of policy. If I am allowed at a later stage, I propose to move a further amendment — or perhaps somebody else will — in which we shall say the insurance money shall go to the creditors as well as any remnant there may be of the ship. But for the moment I am not dealing with that. I am on this principle : I say it is not right that the risk of the shipping shall fall on the creditors, and the payment of their claims should depend upon the ship's safety, and I am hoping, if this matter can be postponed, that in years hereafter perhaps those in other countries may come to recognise that principle, which seems to be one of justice. May I suggest that my proposition be seconded ?

(*Traduction orale par* M. Louis Franck).

M. Carver a dit qu'il lui était pénible de devoir s'écarter des représentants de l'armement anglais, mais que telles avaient été ses vues dès le commencement des travaux. Il estime que ce n'est pas une mesure sage de vouloir voter cet avant-projet de traité parce qu'il est de nature, dit-il, à empêcher le Gouvernement anglais de se joindre à la conférence diplomatique sur l'Abordage et sur l'Assistance, surtout, si on étend le projet à la question des contrats. M. Carver examine

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alors les différentes raisons proposées. Il dit : il est vrai que les armateurs anglais réclament mais ce ne sont pas les seuls intéressés. On prétend que l'on veut de cette façon arriver à l'uniformité ; mais à mon avis, on ne l'atteindra pas de cette façon. Il est vrai qu'on peut répondre que le système anglais a déjà admis la limitation de la responsabilité à £ 8. Cette responsabilité pour le capitaine, ne sera donc pas de droit commun une responsabilité absolue. Mais M. Carver pense que c'est précisément là le point sur lequel le système anglais est préférable, parce que le système anglais fournit toujours un dédommagement tandis que le système continental a, d'après M. Carver, le vice que, lorsque le navire est perdu, on n'obtient rien.

M. Carver a exprimé sa satisfaction de ce qu'il a entendu dire par les délégués français et allemands sur le système anglais ; il voit avec plaisir que sur le Continent, on recherche maintenant dans une certaine mesure la limite anglaise de £ 8.

M. Carver propose donc de laisser cette difficile question de côté. Mais il croit que tout au moins, il serait mieux de borner le traité sur la limitation de la responsabilité uniquement aux faits de navigation, si l'on veut avoir quelque chance de faire accepter le système proposé.

Il se réserve en outre, tout en ne visant en ce moment ce point qu'incidemment, de proposer un autre amendement, pour donner au créancier le droit de se payer sur l'indemnité d'assurance et tout ce qui subsiste du navire.

Mr. W. A. Williams (Standard Marine Insurance Company). The differences of opinion which exist upon this question and the difficulties which surround the problem as revealed by the discussion which has taken place this morning, and also at the previous meetings of this committee, suggest that there may be some simpler plan of meeting the difficulty than the elaborate one which has been proposed, and which has been so much discussed. The plan which I propose, and which I mentioned on previous occasions, and which has also been spoken of at previous meetings of this committee, is the total abolition of liability for material damage and allowing the loss to rest where it falls. It is obviously a simple solution ; it is practical, and its simplicity is perfectly clear, and I am

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convinced of this, that there can be no finality and no settlement short of the total abolition. Mr. Carver, I think, struck the nail on the head when he said that any alteration of the law would have to be justified, and that he did not think it would be justified by the proposals we are discussing at the present time. I think he made out a very good case for doing nothing, at least for doing nothing on the lines laid down by the treaty, and I do not despair of winning over Mr. Carver to the proposition I now submit to you. It seems to me the *raison d'être* of the liability of the shipowner for collision is that the suffering and the loss by the collision will involve him in considerable pecuniary loss. That was all very well when there was no such thing as insurance, but when you allow the shipowner to insure himself against that liability — in fact, to obtain complete protection, a complete indemnity — then I say you remove that motive entirely, and there is no restraint arising from that source. Now, of course, the effect of the abolition would be to alter the relations of the underwriter to the ship and cargo. At the same time that could be very easily adjusted by a re-arrangement between them. That could very easily be done, and I have no doubt the underwriter would be prepared to do it. Now, what are the objections to this scheme? There may be objections in principle, and there may be objections in practice. Now with regard to objections in principle it may be said that it is opposed to the general rule of jurisprudence that everybody is to be liable for his actions, and I would like to refer to a remark made to me by an eminent King's Counsel with regard to that question. He said to me : « Would you extend the principle of non-liability to the case of a butcher's shandry coming into collision in the streets? » I pointed out that there is a very essential difference between the two cases. The butcher is not

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insured against his liability; the shipowner is. I think that entirely disposes of that. Well, the next thing I would like to refer to is this, that already exceptions have been taken to that principle by allowing the shipowner to contract himself out of a great deal of the liability to which he is subject. Now, as you know, the shipowner is liable in common law for the loss of cargo in his own vessel arising from the negligence of his servants. Now, by his bill of lading contract he has contracted himself out of that liability, so that there is an exception to the general principle of jurisprudence, and there is no doubt whatever that he would also contract himself out of this other liability if it were practicable, but it is not practicable for the shipowner to make a contract with the world; he does not know what ship he may run down, therefore it is not open to him to make a contract exempting him from liability. I may take also an illustration from the United States. According to the United States these bill of lading exemptions were not permitted; they were contrary to law, and it was felt that they placed a burden on the American shipowner as compared with the English shipowner. Then the Legislature stepped in, exactly in the way I should suggest the Legislature should step in in this case, and passed a law and freed the American shipowner by statute from those liabilities from which the English shipowner is exempted by contract under certain conditions; and what I say is: what the American Legislature did for the shipowner the English Legislature can do for the shipowner, and not for the shipowner only, but for the general community. Now as to difficulties in practice. How is this to be done? As you know, the Merchant Shipping Act has already limited the liability for material damages to 8*l*. per ton, and the liability for personal damage to 15*l* a ton. I may say at once I do not

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propose the personal liability should be touched at all; that should remain, and it is only liability for material damage that should be touched. Parliament has limited that liability to 8*l.* per ton, and if it is competent for Parliament to limit it to 8*l.* per ton, it is competent to limit it to 8s. per ton, and competent for Parliament to abolish it altogether, and that is what I suggest ought to be done. Well now, if Parliament did that, of course that would be legislation for England only. I go beyond that: I say we should have an international agreement upon it. If the committee would vote for an agreement on that basis there would be much more likelihood of success, and its labours would be likely to be much more fruitful than by attempting any other course. Now as to the difference in practice. I have already referred to the simplicity of it; that I believe to be perfectly obvious. One further great advantage would be the saving of the enormous legal expenses which are connected with collisions at sea. This I feel is perhaps a nasty aspect of the question which does not commend itself to our legal friends, but it seems to me it must be considered. We have to legislate not for any section of the community, but for the whole community. I have no doubt you will feel that if business is taken from lawyers by any alteration of the law such as I suggest, there will be many other spheres of usefulness for them to devote their attention to. Now, another advantage would be that it would prevent trumped-up claims against shipowners. I daresay you may be aware, certain shipowners would be aware, there are a great many trumped-up claims against them. Small tramps of little or no value frequently put themselves in the way of large ships and suffer slight damage, or none whatever, and then put in a large claim upon the shipowner, who very often, rather

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than contest it, submits to a species of blackmail. It might be thought that the uninsured shipowner would be the one to object to the abolition of collision liabilities, but I don't think such is the case. I know certainly one large firm of shipowners in Liverpool who are largely uninsured, and I think the uninsured one is the one who takes the most care, and therefore will be most indifferent as to the abolition of these liabilities. The underwriters are not so much concerned by what the law is. What the underwriters want in the law is simplicity, economy, and international unity ; and if these three can be secured, underwriters will be satisfied. As I have said, they will be prepared to adjust their premiums in accordance with the liabilities imposed by any alteration in the law, and they will be quite well able to take care of themselves. Now, gentlemen, I think this does seem to me to be a very satisfactory settlement of the question. I have not much hope of it being accepted by you, gentlemen, but I hope it will be considered. It is an aspect of the case which I think ought to be brought before you, and which I think ought to receive consideration. I feel convinced of this, that the more it is considered the more likelihood there is of it being commended to you, and bringing this committee to a satisfactory solution of this most difficult problem.

(*Traduction orale par* M. Louis Franck)

M. Williams a dit qu'il a un plan bien simple pour mettre fin aux difficultés de la question. C'est la suppression de toute responsabilité en matière d'abordage On a objecté de la part des juristes anglais, notamment, qu'il fallait une raison bien plausible pour apporter un changement aussi considérable dans la législation anglaise sur ce point; et il espère que M. Carver se ralliera à la proposition qu'il fait.

Quant à dire que ce serait un encouragement pour la négligence et que la vie humaine en souffrirait, il répond qu'il ne fait sa proposition que pour les dommages matériels.

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Il serait donc d'avis que la loi anglaise d'abord, et toutes les autres législations ensuite, admettent la suppression de toute responsabilité.

Il y aurait à cela 1° l'avantage d'une grande simplicité ; 2° une énonomie considérable de frais ; en troisième lieu cela empêcherait des réclamations fantaisistes.

Quant aux assureurs, c'est pour eux une simple question de prime.

THE PRESIDENT : I am also asked to mention a very courteous invitation that has been placed in my hands from the Conservative Club of Liverpool, who hope that the members of the Maritime Conference will do them the honour of considering themselves honorary members of the club during their stay in Liverpool. A similar invitation has come from the Liverpool Reform Club.

Conference adjourned- — La séance est suspendue.

THURSDAY, JUNE 15th 1905.
JEUDI, 15 JUIN 1905.

Afternoon's sitting. — Séance de l'après-midi.

Mr. PRESIDENT. — I now ask Mr. Douglas Owen to continue the discussion.

Mr. DOUGLAS OWEN (London). — I rise to second Mr. Carver's resolution. I should have seconded it with greater pleasure if it had gone further, and if, instead of leaving out those words which he proposes to delete, he had proposed that the whole resolution should be dropped. In seconding the resolution that we omit the words simply, I reserve to myself the right — we are now in comittee, I believe — to vote against the resolution as a whole if it should come before me later on. I desire to associate

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myself with Mr. Carver in his regrets at having to take a course which must, I fear, be repugnant to many of our colleagues at this meeting, some of them being more or less wedded to this proposal. It is, therefore, painful to me to have to oppose, but from the beginning of the Association I have always consistently adopted the same attitude, as you may remember, and I must needs do so to the end, unless something occurs to make me change my opinion, which, I think, is unlikely. I oppose this resolution, or rather I oppose this proposal, because I think it is a false step. As Mr. Carver very properly pointed out, it must needs deprive this Committee of the important support we hope to derive from the British Government. It is an attempt to compromise conflicting principles, and I do not believe such an attempt was ever successfully made yet. It is an attempt to reconcile the irreconciliables, and on that account I believe it will fail. I say it will deprive us of the Government's support, first of all, because most of you will know it is entirely opposed to the principles of the history of British legislation. I think also the Government might reasonably say. « Well, what are the arguments in favour of this somewhat startling proposal? » You have heard from Mr. Carver that, practically, the arguments, if there are any, are certainly far from convincing. The main argument is one of convenience, and I think the Government may reasonably reply to that, so far as convenience is to be used as an argument, « Have you not also, on the other side, the advantage of insurance; cannot this inconvenience be largely overcome by resort to the facilities of insurance? » And I think there will be a great deal in such a rejoinder. Finally I think — I might have put this first because I feel strongly upon this — it is a proposal which entirely ignores the rights and claims of cargo shippers. It treats them as if they were a negligible

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quantity, or as if they were non-existent. Not long ago, for an entirely different purpose, I had occasion to take out the values of certain ships and cargoes. I had in my office, I daresay, a hundred general average statements, and I picked out thirty relating to steamers that were loading cargo on the berth. Most of them were steamers, and all were carrying more or less valuable cargoes, and I found as a result, dealing with ordinary cargo vessels, not with mail steamers, which of course give up their cargo space to passenger service, the cargo is three times, or perhaps four times, the value of the ship, and yet this proposal is put forward, as I said just now, as if cargo were non-existent, or as if it were a negligible quantity. It is impossible for me to believe the Government will ever favour a proposal which proceeds on these lines, and I should be sorry myself for any Government which did. M. Verneaux, in his very interesting remarks, said that in the year 1807, or the beginning of the last century, things were very different from what they are now. He said ships then were all much of the same size and of the same value. He pointed to the great difference that exists now, to show how shipowners, who in the old days ran with small and comparatively uniform liability, now ran with very diverse liabilities of very large figures. All that is quite true, but to make M. Verneaux's parallel complete I think he should have pointed out how the system of insurance has grown meantime, and the losses which seem so serious a charge to the shipowners nowadays, as compared with the old days, can conveniently be met, and are met, at no great outlay in premiums. I only mention that for fear anyone should be carried away by the arguments to which M. Verneaux attached so much importance Mr. Leslie Scott produced some figures which I am sure we all heard with great interest, and I feel sure I am only expressing

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the opinions of my colleagues if I say we were impressed by the admirable and lucid manner in which he placed them before us. They were not easy to follow, but he stated them in such a clear manner as to enable us to grasp the whole situation. But with all respect to Mr. Leslie Scott, I think they are hardly to the point in our present discussion, and if and so far as they were intended to show that in placing an average value of 8*l.* on a ton on our ships the British Government made a mistake, and that 6*l.* or 5*l.* 14s. is more nearly the value, then, so far as we may take those figures as correct, I think on such an argument they would be convincing. Those arguments may be advanced at some future time as a proposal to the Government to amend an erroneous 8*l.* a ton and make it a correct and proper 5*l.* 14s. or 6*l.* a ton. There was a great deal in his argument, but otherwise, I think it is not quite relevant. I think that the first step towards uniformity in this matter, if we are ever to have it, must be this : That the Continental law should be placed on a footing — I was going to say of commonsense and justice, but I should be exceedingly reluctant to use any expression that might not seem quite polite, but I will state the fact without characterising it in terms. The fact is that the Continental owner or the American owner of a wrongdoing ship, which sinks — say the ship is worth 20,000*l.*, she will probably be insured for 25,000*l.*, but that does not matter; she sinks. The owner of that ship says : « I have my 20,000*l.* or my 25,000*l.* in my pocket, which represents my ship, and, although I have sunk your ship, I am not going to give you a penny; my national law says that I am not obliged to ». Why ? Because when that system was instituted it was not understood as it is now. If a shipowner lost his ship he lost it out and out, and he got no sovereigns paid into his pocket by way of compensa-

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tion. That seems to me to be an injustice and largely an absurdity. In a sense the value of a man's ship is never lost so far as she is insured, and I think the first step towards uniformity should be that our Continental friends should approach this particular point of the subject in a spirit of fairness, and saying, « We will endeavour to persuade our Government to alter the law in the sense in which it now stands in Great Britain », and I gathered from Mr. Carver that there are one or two countries which are disposed, or show a disposition, in that direction. Now, the proposal now before us is this : — That a wrongdoing ship — an injuring ship — should have the choice of two systems ; that she should be able to pick the plums out of two cakes. She will be able to say : « I am going to choose the method of indemnity which will give the injured party least. » That is the proposal. If it is a fair proposal, it ought to be equally fair stated conversely. Supposing any member here had come with the proposal and said : « Yes, I approve this proposal in principle ; there seems to be a great deal to be said for it, but I would propose that the injured party has the choice, not the wrongdoing party — the man whose ship and whose cargo is lost should have the right to say « I demand compensation on such and such a system. » How far would such a proposal as this have advanced in this year's discussions? It would have been dead the very first time it was brought forward, but as I say, if the proposition is a fair and logical one, it should be capable of being logically and reasonably regarded from both points of view. I think, looking at it conversely, it shows the falseness and the fallacy of the proposal. Now I do not wish to take up any time unnecessarily, so I will say but a very few words on a subject which, I think, perhaps, I ought not to be in a position to have to speak upon at all, because it is altogether outside

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the work that is before us to-day, and that is a somewhat startling proposal brought forward by my friend, Mr. Williams, that the free and easy and the short and simple way of getting over this difficulty is that nobody is to be liable for anything ; that is practically what it boils down to. In making those remarks I do not think he was adressing himself to the resolution before us, but I dare say he was in his right in doing so. If the matter should ever be seriously discussed, there would be much more to be said upon it than I propose to say now, because I propose to say simply this, that this proposal should be, in my mind, an attempt to legislate backwards, and, other grounds apart, I think, stands self-condemned, or at any rate stands amply condemned, inasmuch as it contains the same fundamental error that the other proposal now before us contains ; that is to say, it takes no heed whatever of the rights of cargo. Ship A may sink ship B ; that does not matter. A does not pay anything ; it will be B's turn tomorrow, and B, in its turn, will not pay anything. But it is said, « How about the cargo, is cargo never to get anything in these matters? Is cargo to be ignored — cargo that is worth three times the value of the ship? Then I think Mr. Williams said — well, I am not quite sure what he said about that, but I think the sense of it was that the shipowners would like it, but such a conception is impossible to me, to think that the owners of large uninsured steamers, mail steamers or other, should be content that if their ship was sunk they should get no compensation from the ship that sunk them, because one of these days they in their turn might sink another vessel and they, in their turn, would not have to pay anything, but that leaves out of consideration the fact that the ship theoretically — probably it is true in practice too — is in command of officers and crew not at such a high skilled or such a high degree

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of care as the officers and crew of mail steamers and uninsured steamers, and the owners of the mail steamer and uninsured steamers, on the one hand, would have no compensation against the careless owner who ran them down ; or, on the other hand, in my opinion that value to them would be very little, because they woud very rarely stand in the converse position of having to defend themselves, because they are so particularly careful, by selection and education in their captain and crew, that they run much less risk of running down other vessels than other less carefully handled vessels. Now, the proposal would put the owners of mail steamers and only partly-insured steamers at the mercy of the careless and irresponsible, and that in law — in any proposed law which would have such an effect as that — would, I think, be viewed with deprecation. In conclusion, let me say, Mr. President and gentlemen, this : That this Committee is now and has for years been engaged in most valuable and most useful work. Its valuable and useful work it has now brought up to a point that there is one thing wanting — I won't say only one thing, but only one great thing wanting to give it a lift forward, and that is the co-operation and the support of the British Government. Do let me then beg of you not to mix up with this good and valuable work conditions which will infallibly deter and alienate others whose sympathies we desire so much to obtain.

(*Traduction orale par* Mr. Gow).

M. Douglas Owen supporte la résolution de M. Carver et il a dit qu'il le ferait avec bien plus de plaisir encore si M. Carver était allé un peu plus loin. Il pense que si nous adoptons cet article, nous perdrons l'appui de notre Gouvernement. La proposition, d'après lui, tend à concilier l'inconciliable. On ne pourra jamais convaincre le Gouvernement que les avantages de pareil système seraient assez grands pour le faire passer.

La proposition ne tient absolument aucun compte des droits des

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chargeurs, des cargaisons. M. Owen dit, en réponse à ce qu'a dit M. Scott, ce matin, sur la valeur des navires, que la valeur de la cargaison est ordinairement trois ou quatre fois plus grande que la valeur du navire transporteur.

M. Owen suggère que le premier pas vers l'uniformité serait que les armateurs du Continent songeassent à modifier leur système de loi en le mettant plus en rapport avec l'équité et le droit. Il est excessif de laisser l'option de choisir un des deux systèmes de compensation à celui qui est en faute. De cette façon, par exemple, le navire en faute, qui a sombré dans un abordage, pourrait, tout en encaissant les sommes que lui paient ses assureurs, prétendre faire abandon et ne rien payer du tout à ceux auxquels il a causé un dommage considérable par sa seule faute. Il dit que ce système est injuste et absurde.

Enfin, M. Owen discute et critique la proposition de M. Williams et il dit que l'abandon de tout recours contre les autres parties serait, non pas un progrès, mais un recul. On y néglige entièrement de considérer les droits des chargeurs et de la cargaison. Il lui paraît impossible enfin, en ce qui concerne les grandes lignes, que les armateurs des steamers particulièrement soigneux d'éviter des abordages seraient contents de rester sans aucun recours pour les dommages qui leur seraient infligés par d'autres navires bravant impunément les lois de la prudence. Ce systéme serait une prime à la négligence. Il y a une chose dont nous avons grandement besoin, c'est la coopération et l'appui du Gouvernement anglais, et il importe de ne pas faire perdre l'espoir de cet appui.

Mr. Wm. Pickford. K. C. (Recorder of Liverpool) : I apologise for intervening in this discussion on two grounds — first, because, although we have at the beginning of this sitting this morning heard speakers from other countries, I think, lately, the English have been monopolising the discussion, and I should not wish to do so too much, and, secondly, because I am speaking as a lawyer and I do not think that this altogether, or indeed, in any great measure, is a lawyer's question. I think it is a question for men of business. I agree with my friend Mr. Carver that it is not entirely a shipowner's question. There are other people to be considered besides the shipowners, although they are

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very important people. You have to consider the cargo owners and you have to consider other persons who may have claims against ships. It is not a lawyer's question, but a question for the shipowner and for other business men, and the only great advantage I can see of having lawyers in the discussion is that they may be able to point out when propositions are brought forward which will not work in practice in the Courts. When they have done that it seems to me they have in a great measure discharged their function, and if they do not see that the propositions are such as will not work well, then the decision as to whether those propositions are to be adopted or not is, as I said, a decision for business men, and is a question of policy and not of law. May I be forgiven if I try to point out to the committee for a moment what we are now discussing, because, with the greatest possible respect to Mr. Carver and Mr. Douglas Owen, I think their speeches, though admirable, have gone beyond the matter which is now before the committee. We are now discussing whether we are going to adopt, for the first time, any limitation of the liability of the shipowner beyond and above that of the 8*l*. per ton now fixed by the English law. This committee has accepted the principle. It has accepted the principle that in cases of wrongful navigation, and all the consequences of wrongful navigation, that liability is to be as now in the draft-treaty, and the question we are discussing is this: There is a proposition by Mr. Taylor that this meeting of the committee, or this meeting here, approves the draft-treaty as it now stands. There is a proposition by Mr. Carver, seconded by Mr. Douglas Owen, or rather an amendment to that proposition, that this meeting only approves so much of the treaty as deals with the limitation of liability for wrongful navigation, and the only question we have to decide is: Are you or are you not going to

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include in that limitation « contract », as well as improper navigation ? Now, even if I felt inclined to do so, I should have great hesitation in differing in the least from Mr. Carver or Mr. Douglas Owen on the general principle, but I start on the understanding that you have accepted the principle, and the only question is, are you going to extend it to « contract », or are you not ? That seems to me not so serious a question as was represented by both Mr. Carver and Mr. Douglas Owen. I do not know what the British Government may do ; I do not even know, when the question comes before them, what the British Government may be ; but if the British Government will not object to take part in any discussion where the general principle of limitation of liability has been admitted, in the case of improper navigation, I fail to see why they should decline to take any part in a discussion as to whether it should be extended to contract or not. The Government may say we are not going to depart from what Mr. Carver calls the fundamental principles of the law, namely, that the master is to be responsible for the acts of his servants and responsible to the extent of his own resources. That question is not before you. You have accepted that in the case of improper navigation, and therefore you are not asking the British Government to interfere with the fundamental principle of law. That has not yet been interfered with, but it is interfered with to a certain extent by confining the limitation to 8*l.* a ton, and you are going to ask it to interfere with it in every case of improper navigation. Will you imperil that altogether by including in what you ask the Government to do the question of contract ? That seems to me, as I say, in a great measure a matter of business and of policy, but if in asking them to include that you are asking them to do something which will be a grave injustice to any body of people, well

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then certainly you are imperilling your chances of their doing anything at all, and therefore you have to look, as it seems to me as a matter of business, to the question whether by asking them to include that, you are doing anything that is likely to impose a great injustice upon any body of people. The cargo owners, I quite agree with Mr. Douglas Owen, are very important. Cargo is very often, he says, three or four times the value of the ship; but is the cargo owner always free now to make his claim against the shipowner? Has this committee never heard of the negligence clause of shipowners? I heard in one speech at Amsterdam of a speaker pointing out that the cargo owner is not now in most cases in a position to make an unfettered claim against the shipowner because he has always the negligence clause. It does not always succeed I know. Personally, of course, we have all been interested in claims by cargo owners which have succeeded in spite of the negligence clause, but the cargo owner is not now in an unfettered position to make a claim against the shipowner as he was — I do not think intentionally — represented to be. Therefore, you will be doing no great injustice to the cargo owner, and you have the other creditors as Mr. Taylor pointed out. These creditors are not creditors in England as a rule. They will be foreign creditors, the foreign repairer, or foreign necessary man, and he has, you know, to deal with the foreign ship upon the basis that this treaty proposes to put English ships upon, and he has to look after his own interests, and he does look after his own in the case of foreign ships where this liability does not exist. He is the foreign repairer and the foreign necessary man, and I do not think it is necessary for us representing the English creditors to reject this limitation of liability in the case of creditors when the gentlemen who come from the country in which

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these foreign repairers and necessary men live, see no injustice in it. They are the persons who would I think protect the foreign creditors and foreign repairers and necessary men, and they do not wish that any injustice should be done to them by putting the English shipowner on the same footing as the foreign shipowner. I do not see why we representing the British interests should take a stronger view in the protection of those gentlemen and those creditors than their own countrymen, who know exactly the risks that these creditors run, and know exactly whether any injustice has been done to them or not. Commerce, as I understand it, and business adjust themselves very soon to existing circumstances — and it would not take very long, I think, for those creditors whose interests may possibly be prejudiced by this treaty, if carried out, to make their own arrangements to deal with English ships upon the same footing as that upon which they now deal with foreign ships, and therefore when you look as far as you can at the possible result of including contracts in the limitation of liability, it does not seem to me, I submit, that you will be doing any very grave injustice, or such a grave injustice as to induce the English Government to say they will have nothing to do with it. Now for these reasons, though, as I say, it is with the greatest possible diffidence indeed that I differ from anybody who knows so much more about it than I do as my friend, Mr. Carver — for that reason I should submit that no harm can be done by adopting this inclusion of contract, because when you come to examine it, it does not seem to impose any grave injustice upon anybody, and also because you have already admitted the principle. If you had not already admitted the principle in the case of improper navigation I think there would be a very great deal to be said against the probability of the British Government

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interfering with the fundamental principle that the master is responsible for the acts of his servants; but as you have already decided to accept the principle in the case of improper navigation, I should submit to this meeting that there is really no valid reason for not including in that principle the principle of contracts of the master as well. It may be that if the British Government does think right to consider what this Committee puts before it and to take part in the discussions, it may be that they may accept one part and not the other; it may be that when they come to consider it, they may say: we will accept it in improper navigation, but we will not accept it in contract. If that be so, perhaps it is not always a bad thing that there may be two things. You want to get them both, but you are particularly anxious to get one. It may not be a bad thing sometimes to have one thing which they may not be inclined to accept, and then you may get the other. Whereas if you only asked for one you would not get any at all.

(*Traduction orale par* M. Louis Franck).

M. Pickford vous a dit qu'en ce qui le concerne, il ne considère pas la question en discussion comme essentiellement une question de droit. Il estime, au contraire, malgré tout le respect qu'il a pour M. Carver, qu'elle doit être résolue par les hommes de la pratique et par les armateurs en premier lieu. Il a ensuite demandé à ramener la question à ses véritables proportions. Le principe qu'il y aura en matière de responsabilité une option entre l'abandon et les £ 8 est un principe accepté en tant qu'il s'agit de fautes de navigation ; il est acquis et il n'y a donc plus lieu de le discuter ou de voter.

Reste la question des contrats. Le principe de l'option étant voté, faut-il l'étendre aux contrats. Et ici, M. Pickford dit que c'est avant tout une question de politique. Est-ce que véritablement, si l'on s'adressait au Parlement, on compromettrait par l'insertion de cette extension, le sort du traité tout entier? Et M. Pickford croit qu'il n'y a pas de raison pour laquelle que le Gouvernement n'accepterait pas ce corrolaire. On a parlé, dit M. Pickford, de la grande injustice qu'il

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y aurait, dans pareille disposition, pour les contractants du navire ; mais enfin, qui sont ces contractants ?

Comme M. Owen l'a dit, il y a les chargeurs, dont la cargaison a une valeur plus grande quelquefois que le navire même. Mais dans la plupart des cas, elle accepte une clause d'exonération. Que peut-elle donc devoir craindre de plus par l'extension du principe ?

Il y a aussi des gens qui ont réparé le navire, qui ont fourni des victuailles. Mais entendons-nous. En tant qu'il s'agit de fournitures et réparations, faites hors de l'Angleterre, qui sont les intéressés ? Ce sont des étrangers qui dans leur propre loi acceptent la limitation. Mais est-ce qu'il appartient à des membres anglais de la conférence de parler de ces intérêts puisque les membres du Continent ne se plaignent d'aucune manière ; puisqu'ils ont cette limitation dans leur loi et qu'ils demandent qu'on l'étende.

Donc, une fois le principe admis en matière de fautes nautiques, il n'y a aucune raison de ne point accepter cette extension.

M. Charles Le Jeune (Anvers).— Messieurs, Ce matin, M. Leslie Scott nous a donné quelques indications très intéressantes sur l'importance des marines des différents pays et notamment sur celle de l'Angleterre. Il a parfaitement défini, dans les paroles qu'il vous a adressées, le grand poids qu'avait cette question d'intérêt pratique et je me permets d'y ajouter quelques considérations.

La marine marchande anglaise représente actuellement la moitié de la marine du monde entier. Cette puissante marine est dans le cas de chercher dans les ports du monde entier son aliment et c'est précisément dans cette situation que nous trouvons une raison décisive pour qu'elle se rallie au mouvement en faveur de l'unification.

Ces navires anglais, qui comptent 14,000.000 de tonnes dans quelles proportions fréquentent-ils les ports du monde entier ? Ce serait une statistique que l'on pourrait difficilement faire ; mais je m'en vais vous citer un exemple qui, dans notre pays, vous démontrera jusqu'à quel point les

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navires anglais sont actuellement soumis, non à leur loi, mais à la loi étrangère.

Notre port enregistre par an une entrée de 9,000,000 de tonnes, dont environ la moitié est composée de navires anglais. Par conséquent pour ces 4,500,000 tonnes qui font naître régulièrement à Anvers une quantité correspondante de conflits, les navires anglais sont soumis à la loi belge, et leur loi nationale est sans application. La proportion n'est peut-être pas rigoureusement telle, mais en tous cas doit s'en rapprocher sensiblement.

Nous pouvons constater le même état de choses à Amsterdam, à Rotterdam dans des proportions plus ou moins variables, ainsi qu'à Hambourg, en Amérique et dans les autres points du monde. C'est une situation de fait, et comme vient de le signaler avec tant de justesse et tant de force M. Pickford, nous ne nous trouvons pas ici devant une question de doctrine.

Vous avez entendu avec tout l'intérêt qu'elles méritent, les remarques de M. Carver et de M. Douglas Owen. Assurément, si l'on se trouvait devant une simple thèse juridique, on aurait à envisager la question sous un point de vue strictement doctrinal ; mais que ces Messieurs me permettent de leur dire, si ce qu'ils disent est la vérité, ils ont eu un tort, c'est de ne pas être nés beaucoup plus tôt, car à l'époque où en Angleterre on a décidé la limitation de la responsabilité des propriétaires de navires, il est évident qu'ils se fussent trouvés parmi les opposants à toute espèce de limitation et que s'ils eussent eu à en décider, nous aurions encore en ce moment la responsabilité illimitée. Mais alors la question qu'il faut envisager, c'est celle de savoir si la marine marchande anglaise serait ce qu'elle est aujourd'hui. Devant les encouragements sous toutes espèce de formes, qui existent dans d'autres pays par les primes, les subsides et les protections accordés aux

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armateurs, je ne puis que difficilement comprendre qu'en Angleterre, il pourrait exister une opinion en vertu de laquelle elle renoncerait en matière de responsabilité à acquérir une situation équivalente à celle des autres pays avec lesquels elle se trouve constamment en ardente compétition. La charge qui est ainsi imposée aux armateurs anglais est infiniment sérieuse et je ne vois pas pour quelle raison, — en présence des législations existant sur le continent et qui favorisent les armateurs étrangers, — l'Angleterre refuserait d'accepter ce qui serait un bienfait pour la marine.

Je crois qu'il est inutile d'insister sur cette question. Puisqu'il est acquis que, quant aux fautes nautiques, les résolutions antérieures subsistent et ne peuvent être changées, nous aurons à nous entendre ultérieurement sur le point de savoir s'il y a quelques concessions à faire sur la question des engagements contractuels du capitaine. Mais ce serait anticiper sur la suite de ces débats. Il est évident que la solution de ce point est entre les mains de l'Angleterre ; le Continent, étant satisfait de ce qu'il a, n'a aucune espèce de part à prendre : il a à seconder éventuellement l'Angleterre, mais il n'a pas à prendre parti.

Si l'Angleterre ne veut pas l'exonération en matière de contrat, ce n'est pas le Continent qui peut chercher à l'y décider. Dans l'ensemble de ces questions, il a donc à écouter très attentivement l'opinion de l'Angleterre. Nous l'avons entendu émettre un avis favorable au maintien entier du projet, par des voix très autorisées; nous avons aussi entendu des opinions en sens inverse. Le résultat semble jusqu'à présent que l'opinion anglaise est en faveur du maintien du traité tel qu'il est formulé et j'espère que ce sera aussi la solution que nous pourrons enregistrer à la fin de cette journée.

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(Verbal translation by M. Gow.)

Mr. Leslie Scott has given some valuable information regarding the values of the fleets of different countries. In effect it turns out that the English fleet comes to about half the value of the fleets of the world, and this is the real reason for wanting an alteration in the present English system. As regards the Continental, taking the statistics of the port of Antwerp, the entries are nine million tons of shipping per annum, and of these one-half are English; that is to say, of the nine million tons per annum, about four and a-half millions are English, and consequently in conflicts under the Belgian law we very often find English shipping interested, that is to say, the English shipowner is interested in the condition of law on the Continent, to the extent, in Antwerp, of about four and a-half millions of tonnage per year. It is not a matter of legal doctrine, and it is not wise to treat it as if it were an affair of mere theoretical justice. If that were so I would not have any hesitation in accepting the views of Messrs. Carver and Owen; but, in reality, it is a practical question. The limitation, if once effected, for negligent navigation was the throwing over altogether of the system of unlimited liability, and it is not at all clear to me that had that system of unlimited liability remained until to-day instead of being abolished, that the position of the English marine would have been to-day what it is — therefore this additional liability put on English shipowners is a severe burden on English shipping; and I see absolutely no reason why England should refuse to accept the benefit which is offered to it for its marine. Having settled the question of improper navigation the question now under discussion is whether any compromise can be found with regard to contracting engagements. The Continental will await the decision of England, admitting the immense preponderance of her maritime importance, and will not attempt to force on England the limitation as regards contracts; but so far I think that the treaty as it stands should be accepted, but I will be willing to accept it in the modified form should that be absolutely insisted upon.

Mr. Herbert Harrison (Liverpool). — Mr. President and gentlemen, I feel that I am perhaps a little bit out of place here, as not being a shipowner or not much versed in maritime law; but I have been asked to say something from the point of view of cargo-owners, and I say what I have to

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say entirely in my private capacity. I am a corn merchant, and therefore have a good deal to do with cargo, and I am not going to speak to the amendment ; but it seems to me, in my private capacity as a merchant, that this can only do good to the cargo-owners inasmuch as the inequality of liability between British shipowners and foreign shipowners will be removed. I am speaking on the particular question which has been already admitted, that the 8*l.* per ton limitation should be brought to one footing ; but I would also like to say that the cargo-owners have been very much spoken of since I have been here to-day ; but they do not have very much directly to do with it, because nearly all cargo is insured, and therefore our side of the question is really put for us by the underwriters. I do not understand that the underwriters are all agreed on this one question, but they do really represent the cargo-owners inasmuch as they are paid for taking over the liabilities of the cargo-owners. I have been asked to say that, because if cargo-owners were here they would have a great deal to say on the subject. We should like to see the shipowners' liability reduced in this matter, but on the technical question I do not think that the underwriters take up our liabilities, and are the people that should be represented here. I have been asked to say that, but I do not think that there is anything further that I need trouble you with, because on the technical part of the question you are better versed than I am.

(*Traduction orale par* M. Gow).

M. Herbert Harrison, président du Corn Trade Association de Liverpool, a déclaré qu'il ne pouvait parler qu'en son nom personnel.

Il dit qu'il a beaucoup entendu parler des intérêts de la cargaison, mais que ces intérêts n'avaient rien de contraire à ceux des armateurs, et que si ces derniers trouvent avantage à mettre leur loi en harmonie

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avec celle de leurs compétiteurs du continent il sera heureux de voir résoudre la question en discussion à leur satisfaction.

Que pour le surplus, la question de la cargaison était pour une bonne part une question d'assurance, et que dans la mesure de leur intérêt, il laisse aux assureurs de se prononcer sur la question.

Mr. CHARLES MC ARTHUR, M. P. (Liverpool). — Mr. President, I understand that the question which the conference is now discussing is that as to whether the limitation of liability, which it is proposed to enact by this rule, shall apply to responsibilities in respect of the damage only or to be extended to contracts. I spoke on this subject at Amsterdam last year, and I should like to repeat what I said then, that my strong opinion is that, unless it is confined to damage, it has no chance of being generally accepted in this country. Now, of course, those who endeavour to effect a compromise between the Continental and the British systems — the British system is one of personal liability as we know. The shipowner is liable personally, not only for damages that his ship may inflict upon another, but also for all contracts or engagements which he may enter into, and common law imposes no limit at all upon that responsibility. Now, of course, it is a great disadvantage to the shipowner that no limit should be imposed, but I think we have to remember that the high credit of British shipping all over the world is built up upon that personal responsibility of the shipowner, and I think that we, as interested in British shipping, have to reckon up that, if we allow that foundation of British credit to be unduly undermined, it will strike a blow at the stability of British shipping all over the world. The Continental system is the abandoning of the ship founded on the system of *fortune de mer*. I suppose that means this, that where a man consigns his property to the sea — engages in a marine adventure — it is rea-

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sonable that he should confine his responsibility to what he puts at stake. He stakes his ship or his cargo, and his responsibility should be confined to that, and according to the system of *fortune de mer*, a shipowner is looked upon as an adventurer who knows nothing about the ship after she has left the port. She gets into the hands of the captain, and the shipowner has no control over her until she arrives again at the port of ownership. I think, though, that that has altogether outgrown the ideas of marine shipping, because the shipowner has now a very real control over the ship by means of telegraph, by means of post, by his agents in every port. The shipowner constantly keeps in touch with the ship, and so this idea of *fortune de mer* is to a large extent an antiquated idea. Therefore I think we must look at this application of this principle to English shipping with very great jealousy and very great care. I agree entirely that it would be a reasonable thing to apply it to the responsibility for damages, but I want the conference to follow how this idea has gradually grown from a very small beginning. Now, when this idea was first broached at the London Conference of 1899, the limitation was confined to damages arising from collision.

The PRESIDENT : Improper navigation.

Mr. MC ARTHUR : Yes, improper navigation. The idea was not entertained by extending it to anything else, but when this conference went to Paris in 1900 it was extended to shipowners' contracts if executed by the captain. That is an entirely new extension, which was contrary to the original idea of the proposition. When they went to Hamburg that principle — that extension — was affirmed, and when last year they came to Amsterdam a draft-treaty was submitted which included this limitation for the acts

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of the master or crew by responsibilities for contracts executed by the master, of responsibilities for contracts on the part of the shipowner if within the master's sphere of office if executed by the master, and so it seems to me that we threw a stone into the pond, so to speak, at the Guildhall Conference of 1899, and it has gone on extending in circles ever since until we have this very great extension put before us to-day, which seems to be beyond anything that was originally contemplated. Now I would like our Continental friends kindly to remember this, that we have gone a long way to meet them. I am not thinking now of the question of the loss or gain. All I am thinking of is having a practical rule, which is according to sound principle, but I would remind our Continental friends that we in England have gone a long way to meet their views in accepting the principle of abandonment which is entirely contrary to our laws and our ideas. We have modified our doctrine to that extent, and we are willing, as regards damages by improper navigation, to accept this compromise which is offered, either to the abandonment of the actual value of the ship and freight, or the payment of 8*l.* per ton. I do think if our Continental friends ask us to go further than that, if they ask us to admit responsibility for contracts I do not say they are not right in principle; but I do not join issue there. We all wish to see something done, and if they insist upon acting on logical views and principles, and carrying out the old Roman Law in its entirety, insisting that either we should admit this theory as applied to contracts, or have none at all, the result would be to wreck the scheme altogether, and we would find it impossible to attain general acceptance of it in England. I feel sure the Government will never be a party to so revolutionary a scheme as this, and, therefore, I do hope the conference will revert to the original principle

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laid down at the Guildhall meeting to limit the responsability in the way proposed to damages arising from improper navigation, and will not go the length of extending it to contracts. If that is done this will allow each nation to supply its own rules with regard to contracts.

(*Traduction orale par* M. Louis Franck).

M. Mc Arthur a dit qu'il est entièrement d'accord sur le principe de l'avant-projet de traité en tant qu'il s'agit des dommages causés par les fautes de navigation. Mais en ce qui concerne une extension au-delà de cette limite, il pense qu'il y aurait de grands inconvénients. Il ne pense pas qu'il y ait une nécessité urgente pour la pratique de faire exception aux règles du droit commun. Il est à signaler que peu à peu, l'appétit semble être venu en mangeant : qu'à Londres, on parlait de dommages par faute de navigation ; à Paris, on a ajouté certains mots à la formule première et qu'à Amsterdam, on a voté en première lecture le traité que vous avez devant les yeux, étant cependant entendu que la question des contrats serait réservée. M. Mc Arthur exprime l'espoir qu'on limitera la formule à la navigation impropre.

The President : In order to prevent any misunderstanding I might say we have the valuable assistance of Mr. Mc Arthur. The actual proposition of Mr. Carver, which has been proposed and seconded, is the omission of the words « or for the engagement entered in to by the master in virtue of his legal capacity » and the addition of the words « for those acts » after the word « liability ». I am not quite sure, and I wish Mr. Mc Arthur to understand that that would not quite cover what Mr. Mc Arthur's view is, which is to narrow it still further, and no doubt some members, if there are any, who share his views, will propose in due time an amendment which will put us all in order, after we have dealt with the one Mr. Carver has proposed. I mean if it is to be limited to damage caused by improper navigation, the best thing is to put those words in as they stand there, and of course

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the corresponding words in Art. 6. The words which are to be taken in would not necessarily limit it in the precise way in which Mr. Mc Arthur asks them to ; it would bring it nearer his view. I think this conference, which has given so much time to the matter, ought to make up its mind ultimately by definite words what is the form in which they wish the treaty to stand.

(*Traduction orale par* M. Louis Franck).

M. Kennedy a fait observer que la formule de M. Mc Arthur n'est pas identique à la proposition de M. Carver. M. Carver supprime les mots « pour les engagements conclus par le capitaine en vertu de ses fonctions légales ». M. Mc Arthur, au contraire indique que ce n'est que du moment où il s'agit de dommages causés par fautes de navigation que la limitation s'appliquera.

M. Kennedy pense que dans l'ordre régulier des choses, il convient de voter d'abord sur la proposition de M. Carver et ensuite sur la question de savoir s'il faut insérer les mots proposés, dans le texte

Je crois, dit M. Kennedy, (et c'est aussi mon opinion) que « les actes du capitaine » ou « la navigation impropre », n'est pas du tout la même chose. La proposition de M. Mc Arthur embrasse notamment un élément contractuel important, car lorsqu'il va prendre cargaison et que le navire rencontrera un dommage, cela rentrerait dans la proposition de M. Mc Arthur, mais je ne pense pas dans la formule de M. Carver.

Mr. William Gow (Union Marine Insurance Company, Liverpool) : I rise with great diffidence primarily to ask one question. Would it be possible for the gentlemen at this conference who are either supporting or opposing the present resolution to agree upon what is exactly covered by the words « engagements entered into by the master in virtue of his legal capacity ? » It seems to me it would limit very much the field of our discussion and enable us to learn very early whether the point now being discussed in such a lengthy way is actually worth the trouble that is being expended upon it. I should say the words which I

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have quoted are literally translated from the law as it actually stands in various Continental codes, so that we are not now attacking a branch of the subject of which there has been no previous experience. There are several remarks which have been made this afternoon respecting the position of cargo, and respecting the position of cargo as covered by insurance. As you are aware, Mr. President, the Liverpool Underwriters' Association is not officially represented at this meeting, but those of us who have the honour of belonging to that body have been able to reserve to ourselves the right of making such inquiries and such statements as may seem to us in furtherance of the general objects of this meeting. I will therefore say that, in my own experience, I am not aware of any serious difference in the rate of premium upon the cargo carried upon ships which have the larger British liability from that charged upon cargo carried upon ships which have the smaller Continental liability. I do not say there are not such differences, because I cannot pretend to know the practice of every underwriter, nor have I the right to speak in the name of underwriters generally. I can only say that neither in the rates I have obtained in my own office or rates ceded to me in insurance from other offices have I been able to discern any discrimination or difference in rates based upon or corresponding to the difference in liability of shipowners of the respective flags. Further, I should like to remark in connection with the general question of limiting liability, it has been assumed during the whole discussion to-day that the limitation of liability has only occurred in cases of improper navigation in Great Britain. But is it not a fact that the Merchant Shipping Act actually does provide a limit for damage to cargo, whatever be the cause of that damage? If you will allow me, sir, I should like to read the section of the Act, Section 503 of the Merchant

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Shipping Act : « The owners of a ship, British or foreign, shall not, where all or any of the following occurrences take place without their actual fault or privity : *a*) where any loss of life or personal injury is caused to any person being carried in the ship ; *b*) where any damage or loss is caused to any goods, merchandise or other things whatsoever on board the ship ; *c*) where any loss of live or personal injury is caused to any person carried in any other vessel by reason of the improper navigation of the ship ; *d*) where any loss or damage is caused to any other vessel ; or to any goods, merchandise or other things whatsoever on board any other vessel by reason of the improper navigation of the ship : be liable to damages in the following amounts, » &c. And one of the cases mentioned is « where any damage or loss is caused to any goods, merchandise or other things whatsoever on board the said ship. » It seems, therefore, there is not a limitation entirely to improper navigation as a cause of liability. Finally, I should like to suggest for the consideration of this meeting, whether it would not be possible, after the full discussion of this clause of engagements, to leave that clause as one of the matters left for final decision to the Diplomatic Conference. It seems to me to be peculiarly a question suitable for diplomatic treatment, when we see the importance attached to it by friends from across the sea, and the importance attached to it by those on this side. If that were so, it might be possible to agree upon a wording which can go forward now for a final decision at the diplomatic conference, and we would be able at least to make some progress on this thorny subject.

(*Traduction orale par* M. Louis Franck).

M. Gow a dit que dans l'Association des Assureurs de Liverpool, il a été entendu que chacun aurait à exprimer ses vues à titre personnel.

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S'occupant à ce point de vue de la question de savoir si vraiment dans la formule en discussion, il y a un risque plus considérable à bord des navires soumis au système continental qu'à bord des navires soumis au système anglais, il ajoute que dans son expérience, autant dans les primes qu'il cote, que dans les réassurances reçues d'autres assureurs, il ne connaît aucune distinction ; il est possible, dit-il, qu'il y en ait ailleurs, mais pour moi il n'y en a pas. Par conséquent, il ne peut y avoir une grande différence dans cette extension.

En second lieu, on a raisonné comme si la loi anglaise n'étendait pas la limitation en matière contractuelle et qu'elle ne l'admettait que pour autant qu'il n'y eût que faute de navigation. Et M. Gow fait remarquer, en citant les termes du Merchant Shipping Act que c'est là une erreur ; il y a deux parties à cet article : l'une s'occupe des quasi-délits, et dans ce cas, on a prévu qu'il s'agissait d' « improper navigation », l'autre s'occupe de la cargaison transportée par le navire : c. à d. matière contractuelle ; mais on n'a pas inscrit dans la loi qu'il fallait qu'il y eut « improper navigation ».

Ce qu'il voudrait voir exprimer dans notre résolution, c'est cette idée-ci : Pourquoi, puisque ceci doit aller à une conférence diplomatipue, pourquoi ne pas exprimer l'idée ; la Conférence diplomatique pourra statuer à ce sujet.

M. Louis Franck (Antwerp) : Mr. Gow was asking what were exactly the contract engagements entered into by the master in virtue of his legal capacity which in the present Continental laws are provided for in the draft-treaty. There is under that head a distinction to be drawn between French-Belgian law and German law to this extent. The French-Belgian, and Italian law also, I suppose, say that engagements entered into by the master are only such as the master has made in virtue of his legal capacity without any interference of the owners. This covers, according to the Continental law in these States, the idea of the damage towards cargo, which also is covered by the present English law, and thereto are to be added such engagements as those of necessary repair and contracts of that sort entered into by the master in a foreign port, also without the inter-

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ference of his owners. I say in a foreign port because under our law it is provided for when a ship is in a home port — the master has no right to make contracts, as a matter of principle, of this sort. The other view, which goes a litlle further and which raelly comes under Article 6, is an extension of that idea which is in the German law, and this extension is that the limitation shall apply not only strictly to the contracts entered into by the master in virtue of his legal capacity, but also to the same sort of contracts even entered into by the owners, provided the execution of such contracts are within the legal liability, the legal capacity, of the master. That means, for instance, when a charter and bill of lading are signed by the owner or the agent of the owner and not the captain, the principle of liability would apply because the execution of the contract on carriage under the bill of lading is within the ordinary scope of the master's duty as a master. That is the difference and that is the question which will come on, I suppose, on Article 6.

Mr. CARVER, K. C. (London): May I andeavour to answer the question as I understand it? The distinction I take to be this. The shipowner is liable for the negligent acts of his master and crew, whether it be as towards the stranger ship and the stranger cargo or towards his own cargo, and I understand this draft to mean in its first sentence that the owner of the ship is to be limited in his liability in regard to the acts of the master and crew. It would, therefore, to some extent cover contracts which would cover his engagements to the cargo on board his own ship. It would also cover his liability towards the stranger ship and the stranger cargo, but now on the next sentence the words which I am proposing we should drop out seem to me to deal with a totally distinct

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class of engagement that is to say, that the master, who is the representative of the shipowner, goes about the world and enters into contracts with various people as representing the owner — it might be for repairs, it might be for supplies and stores, possibly it might be freight engagements and matters of that kind — and it appears to me that to ask any English Government to adopt a principle which would relieve the shipowner from contracts made by his agent would be to go so contrary to the spirit of English law — the very fundamental ideas of English law — that it would be almost impossible to expect that to be taken up. It seems to me, therefore, there is a broad distinction. In the one case the servant is merely negligently carrying out his duty as a servant, You may, therefore, say there is a certain limitation of resposability. In the other case he is simply doing for the shipowner, in the way of contracting, a thing which the shipowner should do or might do for himself but which he delegates to his agent.

(*Traduction orale par* M. Louis Franck).

M. Carver a fait ressortir que dans son idée il faudrait aller aussi loin que la loi anglaise et comprendre dans la proposition les cas où le capitaine remplit avec négligence son devoir de capitaine, parce que là, le propriétaire est impuissant ; mais qu'il faut laisser en dehors de ce traité la question des contracts dans lesquels le capitaine entrerait pour compte de son armateur, dont il est l'agent et qui en cette fonction représente l'armateur lui-même.

Mr. Justice Brandis (Hamburg) : Will you allow me to speak a few words in English. My friends and I agree with the position of Mr. Carver. We will not impose our German law upon any other nation. There is no need at all to make an international treaty also for contracts. We have the Roman law of mediæval times — « In whom-

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soever a man has put his confidence from him he should take it back ». Shipowners and charterers, if they make contracts,must know one another, and then they may trust. If the law of the country where the shipowner lives is against the charterer, the charterer should make his terms, and on the other side the shipowner will save that by clauses in the bill of lading or charter-party. They have already made a good deal, and our German restrictions of the liability of shipowners in consequence of contracts is only a mere by-word. Therefore we are of the opinion that there is no need at all to limit the liability of shipowners for contracts by international treaty, but I believe there is also no hope that it could be done. I therefore think we should follow the conclusion of Mr. Carver.

Mr. R. G. MARSDEN (International Law Association, London) : Mr. President and gentlemen, my excuse for coming forward is that I feel I am in a minority, and it appears to me to be a most important thing that at our present stage the British Government should be induced if possible to do something in this matter. Now I cannot help feeling that as the treaty matter stands at present, not only will they not make any advance, but if they were to see it they would go back. I think it is possible that if the words Mr. Carver proposes to be admitted, if those words were admitted, there might be some hope ; therefore I think it is a very important question, this that we have to vote on now. It is just as well that I should indicate shortly my reasons. I am old enough to remember something of the passing of the Act of 1862, which limits shipowners' liability to the limit which now exists. Now, that question was fought tooth and nail in the House of Commons — the Government against the shipowners. I do not know whether it is habitual with Governments, but perhaps

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the Government of the present day has the same feeling. Now anything we can do to mitigate this position on the part of Governments I think we ought to do if we are to advance at all. We must remember this, that British shipowners have already obtained one or two days later in the matter of liabilities, and attention has been called rather to the matter. It is one which I think is rather a red rag in the Houses of Parliament. The Government has to look after interests which I cannot help thinking are not fully represented here, and they are afraid of touching this question. Therefore I think we ought to make it as easy as we possibly can. The whole subject of the law of collision is not so clear and plain as it might be — in fact, I think it is a law that is still in the making; even some of the most elementary questions are still open. We must not be disheartened at this conference if we find we get on slowly. As an instance of the strange state of the law on the question of collision I would just say this, I happened to read it the other day in a record so late as the middle of the 18th century. It was stated that the cargo owners had to pay as well as the shipowner. There are many other things of that sort which appear to us now to be highly unjust, but all that has been altered, and I think we are gradually getting to a reasonable state of the law of the subject. What I take to be the reasonable view is that the shipowner should be liable for negligence. I will not add anything more now. The discussion has been carried to a great length, and I think the sooner we vote the better.

Mr. Austin Taylor, M. P. (Liverpool): Mr. President, I should like, before any vote is taken on this amendment, to put one question, if I might, to our foreign friends through you. From some expressions that have dropped from them I understand that they are not disposed to press

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anything on this country in this amendment which this country is not willing to accept. I rather gathered that, but I should like on this to ask through you, Mr. President, if this amendment were adopted and these words omitted, whether our foreign friends would be willing to agree to an international draft-treaty which would omit these words.

M. Louis Franck (Belgium). — Well, Mr. President and gentlemen, it seems to me that the question which has just been put by Mr. Taylor is very much to the point. If it be proposed that the only objects — the only cases which would be covered by the limit of liability would be those of improper navigation, we feelthat that is not enough, and the main reason why it is not enough is that the present British law goes further than that ; and I submit it to the meeting, if you accept the principle of limitation against the other ship with which a collision happens — if you accept it against the cargo on board that ship — is there any good reason not to accept it also as against the cargo on the ship itself—the cargo under the contract of carriage? I think there is no distinction to be made, and I think that in the present British law, as Mr. M' Arthur has pointed out, no distinction of that sort is made.

Mr. M'Arthur. — We have accepted that.

M. Franck. — Well, I was just putting that clear in order that I might be sure that I am on that point agreed with you. Now if we are agreed on that point that means we are agreed that we are going to apply the limitation not only to collisions and damage by accident to third parties, but also to damage to the cargo carried in the ship ; then there is not much difference between your views — the views of Mr. Carver and his friends — and the views of

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the other parties at the meeting. As far as I know the opinions of my foreign friends, I may say that they would most probably in many countries be prepared to meet you, and be prepared to say — let us lake the scope of the limit as it at present stands in the British law. Therefore perhaps the right thing might be to adjourn the remaining part of this discussion until to-morrow. I feel sure that, after thinking the matter over on both sides, we may come to some arrangement which really, Mr. President and gentlemen, would allow us to carry this draft treaty unanimously. Ye have gone on now for years. It is five or six years that we have been labouring on it. We got at London only a section of the British shipowners agreeing to the compromise. We have had to-day the great satisfaction of seeing that also the other section of the British shipowners, whose opinions were expressed hy Mr. Austin Taylor and by our distinguished colleague Mr. Harrison, the clairman of the Liverpool Steamship Owners' Association, shared his view — we have had the advantage of many of the underwriters saying, « True a few opponents remain. But let me say to them: « Have they an alternative to propose?» Has anyone risen and said, « I do not like this draft-treaty, but I am going to give you something else that will remedy the great evils about which all complain and the great inequality of treatment between British and foreign shipowners? » No, there is no alternative. The alternative is either you will put British and Continental shipowners on the same footing and not handicap the one as against the other, or you will leave things as they are, and I might remind the meeting of what was so ably said at the London Conference by the late Mr. Laeisz. There was a gentleman there saying, « Well, why do the Continental friends wish the British legislature and the British shipowners to change their law? » and Mr. Laeisz replied to that : « Well, I

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think that there is a great misunderstanding on that point. If we have come here to submit that a change might be made, it was not by any reason of interest. The reason why we have come is that we think that unification of maritime law is a necessity more and more of the international side of maritime commerce, but as to the practical question the practical position it as follows : If English shipowners are satisfied with their laws let them by all means, » said Mr. Laeisz, « keep that law. We have no grievance on the continent. We are satisfied with our law, but as far as our interests go we do not even object to the divergency of the two systems, because under that system every year a certain amount of money comes from English pockets to foreign pockets and never goes back ».

Gentlemen, we have laboured so long on this question that we should try to get an unanimous agreement. My motion is, therefore, that all views having been heard, we might postpone any decision, if it is the agreement of Mr. President, until to-morrow, and if so in the meantime some of our friends would be able to devise a formula which would meet everyone's wishes.

THE PRESIDENT. — It seems to me, if I may say so, that what has been suggested is not unreasonable. I think that if it were possible, after what has passed, if the nations amongst themselves would consider in their section — and possible Mr. Carver would be quite willing to give assistance — we might possibly agree on a wording. If, on the other hand, there remains a definite difference with regard to this question, perhaps Mr. M'Arthur would assist us. The view which he put forward unquestionably at the Amsterdam Conference was that he was not prepared to go further than what had been agreed at London, which was that there should be a limitation of liability of the

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optional kind embodied in the treaty only with regard to what I might call damage arising from improper navigation. Well now, these words that have been inserted in this draft, and to which Mr. Carver's amendment is directed, may be construed, as it seems to me, and as I think Mr. Carver himself thinks, into something really not extending to that which our law at present would admit as proper grounds for limitation or proper subject for limitation ; that is to say, damage to cargo arising on the ship itself in regard to the contract engagements entered into by the master in virtue of his legal capacity. I was not present at the Amsterdam Conference, and I do not know who drafted those particular words, but as I follow now from M. Franck, no great stress is laid upon them ; but then we come to Article 6 which is, I suppose, intended to carry that out in a more definite way, and there the words run : — « The limitation of liability determined according to the preceding articles will be applicable to contracts concluded even by the owner of the ship so far as their execution lies within the legal duties of the master without his having cause to distinguish if the breach of these contracts is due to a member of the crew or not, the case of personal fault of the owner alone excepted. It applies also to damage caused to dykes, quays, and other fixed objects as well as to the removal of wrecks. It is not admitted for the wages of master and crew. » Now, it seems to me, as I read it, that those words are intended to carry out more fully Article I, and the question remains, therefore, wether we can come to an agreement, or whether there must be a vote substantially saying — and I think that would be preferable, because the clearer form of amendment — that that limitation of liability of the treaty shall extend only — that is Mr. M' Arthur's view, if I may interpret him, to damage arising from negligent

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navigation. It seems to me that if that is so — at least it strikes me — I do not know whether Mr. Carver and Mr. Pickford would agree ; but it seems to me that that would rather go too short of what our own law at present provides. I do not know whether there has been any decision upon the point, but under the 503rd section, I think it is, of the Merchant Shipping Act certainly the words « negligent navigation » are not contained in that portion of the clause, which certainly includes under the limitation of liability damage to cargo and property on board ; but be that as it may, it is for this conference to state, not what they think English law is, but what they wish to be the law. If there still remains a difference of opinion, that difference must be expressed by the decision of the meeting, either one way or the other. I will put Mr. Carver's proposal if necessary ; but it is not very satisfactory to vote on an amendment without knowing exactly, or without feeling that there is some real point which is in issue between us. I do not know whether Mr. M' Arthur, who was present at Amsterdam and also in London, would kindly assist us about this matter of the drafting.

The PRESIDENT (to Mr. Carver) : You propose that the owner of the ship is held responsible according to the law of the country ?

Mr. CARVER, K. C. : For the acts of the master and crew, his liability for damage — I can 't help thinking the words, as they stand, cover all the Merchant Shipping Act.

The PRESIDENT : Without the words « or for the engagements entered into » ? You mean to omit those words ?

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M. CARVER, K. C. : Yes, omit those words.

The PRESIDENT : You wish your amendment put — « his liability for these acts » ?

Mr. CARVER, K. C. : I think that is right, yes.

The PRESIDENT : You have a perfect right to name your own amendment. I was wondering whether, after M. Franck's suggestion to leave over the amendment until the following morning —

M. FRANCK : The words in which he puts his idea may perhaps cover in England both the claim against the cargo of the ship and a claim of third parties, but would certainly not be construed in that way on the Continent, because on the Continent we say the question of negligence only enters in when there are third parties claiming whereas cargo claimants against your own ship simply say, « You receive in good state, and deliver in bad state, » and it lies then on the shipowner according to the law to prove there has been *force majeure*, and that is not perhaps the same thing as being liable for improper navigation.

Mr. M' ARTHUR, M. P. (Great Britain) : I am in harmony, I think, with the views of my other friends. Although I used the words « improper navigation, » I do not mean that exclusively. I refer to that as being damage apart from the acts of the master, but I am quite satisfied with the words in the proposal. I understand that to mean the wrongful acts of the master, whereby damage might be caused to the owners of another ship or cargo on board her or the cargo on board his own vessel.

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The PRESIDENT : Very well then, the question Mr. Austin Taylor put becomes quite relevant — are the nations other than England content with that ?

M. FRANCK (Antwerp) · I think, to answer positively, the foreign nations might desire to consult among themselves. Therefore I move we should postpone any decision until to-morrow.

The PRESIDENT : We need not have any other discussion. If the other nations, after consulting their sections, are not prepared to accept the amendment we must take the vote. Very well, then, that is postponed until to-morrow. Are there any other amendments to the drafting or details in this treaty anybody wishes to call attention to ?

Mr. MC ARTHUR : May I ask whether you are referring to the whole of Article I ?

The PRESIDENT : Yes.

Mr. MC ARTHUR : Well, I think I would like to refer to the wording of Sub-section « C », where it is provided that into the fund which is to be constituted the liability of the shipowner : (*a*) The value of the ship ; (*b*) the freight ; (*c*) the indemnities due to the owner for general average, collision, or other damage suffered by the ship during the voyage, subject to deduction of the expenses incurred in putting the ship in a fit state to complete the voyage. Now, assuming it may be agreed that the limitation of liability shall apply to damages resulting from the acts of the master and crew, and does not include anything resulting from the engagements entered into by the master, then we have to be careful what we bring into this fund. In my opinion it should be confined to the ship herself in the

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condition in which she entered the voyage and to the net freight. I do not think we ought to bring in in that case the indemnity due to the owner in general average, because, after all, what is general average? General average must consist of expenses or sacrifices incurred for the common safety of the ship and cargo. Well, now, supposing the expense is incurred, you want the money recovered from the underwriters to pay you for your expenses. Supposing, for instance, it is 1,000*l.* expended between the ship and cargo — well, the owner has to pay that 1,000*l.*, and he has to get that from his underwriters in general average. He cannot put it to the fund. Supposing general average sacrifices, supposing the mast is cut away to right the ship when on her beam-ends. The damage to that mast is made good in general average, and the owner claims the loss from the underwriters under his policy; the insurer pays the shipowner for the cost of making good; this man has a direct claim under the policy. Then this 1,000*l.*, which it cost to repair the mast, is made good in general average, but that goes to the underwriters. Can the amount allowed in general average go into the fund to compensate the other vessel? I think that ought to be left out altogether. It is not an asset of the owner; it is simply money made good in general average to pay a debt which has been incurred for the safety of all concerned. I hope I have made my meaning clear that as regards general average this money that is recovered in general average cannot go into the fund which is required to compensate the other ship, because it has been paid away already and required for other purposes, and is not an asset of the owners. With regard to collision, although the position is not quite so clear. I think that also holds good. I suppose the reference to another collision — supposing the vessel is in two collisions — in the first collision the other ship is to blame, in

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the second collision the ship herself is to blame. Now in regard to the first collision she recovers 1,000*l.*, her owner recovers 1,000*l.* from the owners of the other vessel, but then, if he is insured, that must go to his underwriters, as the underwriters would repair the ship, and his underwriters would then take over the claim on the other vessel. If he is not insured, the 1,000*l.* recovered from the other vessel is necessary to make good his loss. That again is not an asset that would be brought into the fund. I think the same general principle applies to other damage suffered by the ship during the voyage. I would really suggest, my own opinion is that the whole of Clause C should go out, and you should confine the fund to the ship in the condition in which she is at the remainder of the voyage with the net freight — that is, what the owner realises out of the adventure. These other things -- general average and collision and other damage — are not assets of the owner at all. If he is uninsured he has to take his money to make good damage already sustained, and recover from his underwriters. It goes to his underwriters ; it does not constitute an available sum to pay the other ship.

(*Traduction orale par* M. Louis Franck)

M. Mc Arthur propose un amendement à l'article *I C*. Cet article comprend dans l'abandon les indemnités dues au propriétaire pour les faits d'avarie commune, d'abordage et autres dommages subis par le navire pendant le voyage, sous déduction des dépenses faites pour mettre le navire en état d'accomplir le voyage.

M. Mc Arthur dit qu'en ce qui concerne l'avarie commune, cette indemnité que le propriétaire recevra,a déjà une destination, elle doit être versée à son assureur qui lui a payé le dommage. La question est moins claire en ce qui concerne l'abordage. Supposons deux collisions successives ; dans la première, le navire est endommagé et c'est l'autre navire qui est en faute ; dans la seconde, il fait des dommages à un

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autre navire et il est lui-même en faute. Dans ce cas, dit M. Mc Arthur, l'indemnité reçue à titre de dédommagement dans la première collision devrait aller aussi aux assureurs et non aux créanciers de la seconde collision. Si vous forcez donc le propriétaire à payer cette indemnité à l'autre navire, vous le forcerez à prendre cet argent de sa poche, s'il n'est pas assuré, ou vous en priverez les assureurs subrogés à ses droits.

Mr. K. W. EMSLIE (average adjuster, London) : I regret to find I am in difference with my friend Mr. M'Arthur. This draft-treaty speaks about the value of the ship at the end of the voyage. That is, instead of the owner paying 8*l.* he may say, « Oh, I will only pay the value of the ship at the end of the voyage. » It does not even throw upon the shipowner the obligation of abandoning. He may give the equivalent money to the value. Now, supposing if this ship has on this voyage incurred damage, and through stress of weather made sacrifices and is in an unrepaired condition, is it seriously suggested that I, a ship wrongfully run into at a port of call, am to wait until the wrong-doing ship gets to the end of the voyage, suffer damage, make sacrifice, and then I am only to have the value of the property left, when there is recourse against the cargo for a contribution towards that sacrifice ? I submit not. I submit that you are going to make me, who have a claim against the wrong-doing ship, that is this ship in question, a co-adventurer with the ship for the whole voyage. Supposing the ship is sailing from London, and in the London river comes into collision and she is going to Australia, you would have, by your draft-treaty, to settle the value in Australia. Are you going to make me run the whole of the risks this ship might encounter during the voyage — risks by sea peril, losses by sacrifice — and then tell me, after the ship gets to Australia, that you are going to give me the value of it, when you have got recourse against your cargo ? Gentle-

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men, I submit no. There is no fairness in such a proposition. If you are going to say, take the value of the ship at the commencement of the voyage, then I care not for your equities, but I do submit you can never go and ask any Legislatures of any countries to propound such a proposition. Well, now, I think —

M. FRANCK : You mean value after the collision. You say let the party suffering damage step in at once ?

Mr. EMSLIE : Quite so, sir. Then I think my friend Mr. Mc Arthur is assuming a set of circumstances arising in an entirely different way. He said the shipowner can make a direct claim against his underwriter for the unrepaired damage, or, if he has paid the value of the ship as his liability, that he could claim against his underwriter for the cost of repair, and that the underwriter would be associated with the rights of the shipowner against the cargo for a contribution. That is an entirely different proposition which comes forth under the policy of insurance. What I say is that in an act where there is a claim arising under a breach of contract as to the carriage of the ship's own cargo or an action *in tort* for a wrong done to any ship or her cargo, it is not possible to say that goes in the settlement with the underwriter between the wrong-doing ship, because he has to give credit for the amount of general average that he will get from the cargo, that that is any reason why I as a creditor, as a claimant, against the wrong-doing ship for the tortious act should be mulcted in that money. I am very sorry for the shipowner, but that has not reduced my security nor reduced my claim. Whereas this clause wants a little amending and touching up, to say that the whole of these indemnities, where you make my recourse depend upon the condition of the value arriving

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at the end of the voyge — I do say that these indemnities must not be swept out *en bloc*.

(*Traduction orale par* M. Louis Franck)

M. Elmslie a répondu qu'il n'était pas d'accord avec M. Mc Arthur. Vous me donnez la valeur du navire après l'accident, mais allez-vous supposer que je vais encore courir tous les risques de ce voyage jusqu'à la fin? Et si le navire cause une collision dans le Tamise, à Londres, dois-je attendre jusqu'à la fin du voyage, sous prétexte qu'il est affrété pour l'Australie? Et si ce navire a dans l'intervalle des indemnités à toucher, soit pour recours contre des tiers étrangers, soit pour dommages subis, ces sommes se sont attachées au navire et vous devez m'en donner le bénéfice; il me semble cependant que cette idée de la valeur à la fin du voyage est injuste.

The President : I should like to know wether Mr. Mc Arthur wishes to move an amendment? I confess I do not understand his view at present. If there is no amendment to move, it is not worth while continuing the discussion much, because it seems to me, if I might suggest with great respect to Mr. Mc Arthur, it seems difficult to see how any other provision could be made in justice to that which is made because it is reducing really the creditor in this sense, the man who has been damaged by the wrong-doing ship, putting him to suffer everything that the wrong-doing ship does from that time afterwards, although he ought to have the full value of the ship for what it is worth, and if it is to be made up by those indemnities, those indemnities ought to be made up by him.

Mr. Mc Arthur, M. P. : I am afraid I shall have to move an amendment on this point. May I just say broadly I do it on the grounds that I think any rule we may pass ought not to interfere in any way with the contract of marine insurance? The right of a creditor does not include the claim of the owner against the insurer. If you require

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that the shipowner shall pay any amount allowed in general average into this fund for indemnifying, then you deprive the underwriter of that to which he is entitled.

The PRESIDENT : Very well, then. We will have to continue the discussion when that amendment is ready.

M. FRANCK : When the suffering party gets hold of the ship before the end of the voyage she may be entitled to settle the question of abandonment at that moment, and that would clearly put before the meeting what are the two oppositie views. It would mean the amendment of the draft-treaty. It seems to me there is very much justice and good sense in what has fallen from Mr. Emslie.

Mr. CARVER, K. C. : I cannot help thinking that both Mr. Mc Arthur is right and Mr. Emslie is right, and the point of difference, I think, lies here. It is shocking to Mr. Emslie's mind that the indemnities should not go to the person who has been injured, the rights of indemnity against the colliding ship, but then it is shocking to Mr. Emslie's mind, I think, because, like some others of us, he thinks that this is a right principle this draft is framed upon ; but Mr. Mc Arthur, on the other hand, points out, and it seems to me unanswerable, that if an underwriter pays the insurance the underwriter is entitled to the indemnities as a matter of course. He has subrogated to the rights of the assuree, and, therefore, if the assuree has a claim for a collision that belongs to the underwriter, and therefore it seems to me that the difficulty is on the article *the,* to « the » indemnity due to the owner for general avarage, collisions, or other damage suffered. The indemnities belong to the underwriter. They pass to the underwritter as a condition of the insurance

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moneys being paid. Therefore those, the actual indemnities, the rights of indemnity — those cannot pass to the other creditors, but an amount equal to those might pass to the other creditors. I hope that is clear, and therefore the difference really is this, Mr. Mc Arthur is right, I think. in saying the claims for general average on the cargo, the claims for the collision damage from the other ship, those belong to the insurer, but it is quite consistent with that, that the wrong-doing vessel may be liable to make good those amounts to his creditors, and therefore I think perhaps Mr. Mc Arthur would agree with me there, that if you construe the words « the indemnities » to « an amount equal to the indemnities, » then this is quite intelligible.

The PRESIDENT : That is quite clear, but I do not know whether Mr. Mc Arthur is satisfied with that or not ?

Mr. MC ARTHUR : I am really not satisfied with that. My friend Mr. Carver, in seconding the amendment, has rather given me away.

Mr. CARVER : I have not seconded the amendment.

The PRESIDENT : He has not seconded ; none has been proposed. It is quite impossible that persons anxious to give the conference the benefit of their views can do so on indefinite words suggested. Amendments must be written on paper, and you have not handed up any amendment.

Mr. MC ARTHUR : My amendment is simply to exclude Sub-Section C.

The PRESIDENT : Is there anybody prepared to second Mr. Mc Arthur's amendment ?

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Mr. CARVER : I do not know what the right order should be, but I will second Mr. Mc Arthurs amendment, because I think as it stands Clause C is wrong. I should suggest that we put Clause C right by inserting after the word « to » the words « an amount equal to. »

(*Traduction orale par* M. LOUIS FRANCK)

La proposition est donc de modifier l'article en disant : « .... un montant égal aux indemnités dues .... »

En somme, c'est la même chose, mais puisque l'on y tient, je ne vois pas d'inconvénient à cela.

Mr. FRANCK : I beg to second that.

The PRESIDENT : Well, we have got no seconder to Mr. Mc Arthur's amendment, which is to omit it altogether.

Mr. CARVER : May I formally move that amendment before Mr. Mc Arthur's is considered ?

The PRESIDENT : Mr. Carver proposed, and M. Louis Franck seconded, as an amendment to Clause C, after the work « to », and before the word « indemnities », to insert the words « an amount equal to ». Does anyone wish to speak on that amendment ? The amendment may involve a more correct statement of the principle. It means nothing to the person who receives the money, but it states the principle more correctly. Unless anybody wishes to speak to it, I think we ought to be able to take that amendment as agreed to without formally voting through the nations. It is a verbal amendment, as every gentleman here can see.

(*After consultation*) :

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The CHAIRMAN said : It is thought best that the matter should be considered to-morrow morning, as well as the other amendment which has been put. I should like to ask Mr. Mc Arthur, in order that we may finish this promptly to-morrow morning, if he still wishes his amendment to be considered, or whether he accepts Mr. Carver's amendment ?

Mr. MC ARTHUR : I think I am inclined to have my amendment considered, because, even if it were not adopted, some modification should be made in the wording as it stands.

The PRESIDENT : Perhaps you will consider it before to-morrow morning, and be in a position to have a seconder if it is to be proceeded with without further loss of time.

M. LOUIS BENYOVITS (Fiume). Au sujet de l'article I, paragraphe C, je me permets de faire remarquer que dans l'opinion de l'Association hongroise, il faudrait même accorder ces frais en cas d'avarie particulière, c'est-à-dire que s'il arrive un accident après l'acte qui a rendu le propriétaire responsable et si le propriétaire répare son navire, ces frais sont également à déduire à la fin du voyage.

In the opinion of the Austrian Association, Clause C, as it stands should be modified so that at the end it should read, « Subject to deduction of the expenses incurred in putting the ship in a fit state to complete the voyage ». Those words only meant that a deduction of this sort should be made in cases of general average.

M. LOUIS FRANCK (Anvers). Je crois que M. Benyovits est dans l'erreur au sujet de la signification de la clause en question. L'idée est bien celle-ci si l'armateur doit abandonner, non seulement son navire, mais y ajouter les indemnités qui en font pour ainsi dire partie intégrante, il

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aura le droit de porter à son crédit tous les frais qu'il aura faits pour permettre au navire d'arriver à la fin du voyage.

M. Benyovits, par exemple, a cité le cas d'avarie réparée par le propriétaire pour permettre au navire de finir le voyage ; dans ce cas, évidemment, l'avant-projet admet ces réparations en déduction. Mais ne demandez pas qu'il en soit de même quand le propriétaire répare son navire et quand nul ne lui doit aucune contribution.

*
* *

There was not the slightest doubt that the words as they stand in the clause, both in England and France, convey very clearly that idea, that if they wanted an owner to give these indemnities he was entitled, whether it be general or part average, he was intitled to deduct such expenses as he may have made out of his pocket to bring the ship to the end of the voyage — temporary repairs and things of that sort. That was very clear ; there was absolutely no doubt.

Dr. Alfred Sieveking (Hamburg) : As the clause stood the shipowner shall pay over the value of the ship as at the port of destination, and he shall pay it out of the indemnities due to him, but now if we add that he shall take something out of the funds again before the creditors shall put their hands in. Well, that was a question of mortgage and lien and not a question of shipowners' liability. I do not object to this principle, but only it did not belong to this treaty but to the treaty on mortgage and lien.

M. Charles Le Jeune (Anvers) : Je désire aussi vous dire un mot sur le paragraphe B, de l'art. 1, sur une explication qui suit dans l'art. 1 concernant le fret net.

Il est dit : « Le fret net s'entend du fret brut et du prix de passage, même payés d'avance, déduction faite des charges qui leur sont propres ».

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C'est la définition du fret net et cette question est assez délicate. Le fret net qui s'entend du fret brut déduction faite des charges qui lui sont propres, qu'est-ce? Il semble que cela ne soit en somme que le bénéfice, car les charges qui sont propres au fret, ce sont les gages, fournitures, frais de toute nature qui peuvent grever l'entreprise de transport de telle sorte qu'en s'exprimant de cette façon, les mots *fret net* obligent à faire une véritable liquidation par experts pour arriver à la connaissance de ce que peut bien représenter ce terme de « fret net ». Et je crois que cette rédaction n'est pas heureuse, puisqu'au lieu d'offrir une formule simple et claire, on en offre une qui présente de grands inconvénients au point de vue de la solution Il vaudrait donc mieux, comme fret net, indiquer, semble-t-il, une mesure de transaction, par exemple : la moitié du fret brut, ou bien fret brut en entier, ou bien se décider à déduire purement et simplement les gages de l'équipage qui sont généralement considérés comme la charge propre au fret, et quant à moi, je pense qu'on pourrait se borner à la déduction des gages de l'équipage ce qui offrirait une solution assez facile et satisfaisante, au sujet de cette question du fret net. Je n'ai du reste aucune objection à ce qu'une autre solution soit admise, mais je tiens simplement à signaler l'inconvénient de la rédaction qui figure ici.

Il y a encore, sur cette question, un autre point qui n'est pas signalé, et qui mérite considération. C'est que le fret s'entend des différents fruits du voyage. Parmi ces fruits, il peut se trouver une indemnité d'assistance gagnée en cours du voyage. Il peut y avoir également un contrat de remorquage fait pendant le voyage. Est-il inclus dans ces fruits? Il me semble qu'il serait bon de le dire et de rédiger l'article par exemple ainsi :

« LE FRET NET S'ENTEND DU FRET BRUT, AINSI QUE

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» DES INDEMNITÉS POUR ASSISTANCE PRÊTÉE PENDANT LE
» VOYAGE, DÉDUCTION FAITE DES GAGES DE L'ÉQUIPAGE. »

C'est en ce sens, je crois, qu'il y aurait lieu d'amender l'article I.

Si d'autres membres partagent ma manière de voir, je serais heureux d'entendre leur avis et de proposer ensuite un amendement.

(*Verbal translation by* M. Louis Franck).

M. Le Jeune wished to call attention to Article I, Clause B. The words there were, « to the net freight for the voyage until its termination » ; and then it further said, « By net freight is meant the gross freight and passage money, even if paid in advance, deduction being made of the charges which are proper to the same. » He called the attention of the meeting to the fact that this question which was rather a question of detail was not unanimous within the legislation of the Continent. If they drew up an account of what was the freight on one side and the various charges coming in, it meant there would be no freight to put aside except there could be some benefit made on the venture. He wanted to know if it would be more practicable and simple either to say the net freight is to be the gross freight less wages, or to say that the net freight is, for instance, one half of the freight or so much liability which shows the gross freight. He would be glad to hear the opinion of the conference on this question, and then he would propose an amendment.

The President : We shall now rise, but before doing so I should like to say that it is hoped that as many as possible will be here to morrow morning, as the first business to be taken will be a resolution which will be proposed to the conference in regard to the absence of representatives of the British Government from the conference of official delegates which began its sittings in February and expects to resume those sittings in September next. Mr. M' Arthur's amendment and Mr. Carver's amendment will also be dealt with.

The Sitting Closed. — La séance est levée.

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SITTING OF FRIDAY, JUNE 16th 1905

SÉANCE DU VENDREDI, 16 JUIN 1905

Collision and Salvage at Sea

Abordage et Assistance en Mer

Report on the Diplomatique Conference

Rapport sur la Conférence Diplomatique

The sitting opened at 9 30 a. m., Mr. JUSTICE KENNEDY in the chair.

La séance est ouverte à 9 1/2 heures du matin, sous la présidence de Sir WILLIAM KENNEDY.

Mr. JUSTICE KENNEDY (President). Gentlemen, before we resume, and I hope very speedily complete, the consideration of the draft-treaty as to shipowners' liability there is a matter of considerable importance which will be brought before you, and, when I say brought before you, the only voters on this, with the permission of the conference, will be the various branches of British commerce. As you are aware, there has been a consideration already by a conference, at which most of the Governments were diplomatically represented, in regard to the two matters

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already dealt with by the conference at previous meetings, viz, the law of collision and the law of salvage. His Majesty's Government and the Government of Germany have not been represented, and there is a strong desire on the part of those who represent here the British interests to bring before our Government, of course in the most respectful form, their view as to the importance of Great Britain being represented also. With regard to this matter, our distinguished colleague, M. Aug. Beernaert, will kindly address some words to the conference, explaining the present position of affairs, and, after that, a resolution will be moved, of which I will read the terms.

M. Aug. Beernaert (Bruxelles).

Messieurs,

Dans une réunion d'hommes de science, d'intelligence et de pratique, telle que celle-ci, ce serait une banalité que de développer encore l'importance du but que nous poursuivons ensemble. Je n'en dirai que quelques mots.

L'inéluctable loi du progrès veut que le droit, sous toutes ses formes, aille en se simplifiant et en s'internationalisant. C'est la conséquence de ce mouvement prodigieux qui fait, chaque jour davantage, que les peuples se pénètrent et que leurs relations personnelles et d'affaires se multiplient et s'enchevêtrent. Jadis, l'homme s'isolait, la vie était farouche. On n'était pas seulement de son pays, on était de sa ville ou de son village. Les localités avaient leurs coutumes, leur droit, leurs privilèges, comme elles avaient leurs monnaies et leurs octrois. Ces barrières-là sont tombées et j'ai la conviction que d'autres encore tomberont.

Mais ce qui est vrai du droit en général, l'est bien d'avantage quand il s'agit des choses de la mer. Là, sauf dans les limites étroites des eaux territoriales, nul n'est maître, nul

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n'a le droit de légiférer, chaque navire ne connaît que la loi de son pavillon.

Et cependant, sur ce vaste Océan que la nature a fait pour servir de lien, d'instrument d'union entre les peuples, sur ce vaste Océan où tout est cosmopolite, et les navires, et les capitaux qu'ils représentent ou qui forment leur cargaison, et les assurances, il y a vingt législatures différentes, souvent applicables en même temps ou d'après le hasard des relâches, et par là même fatalement en conflit. Lord Alverstone, que tous nous regrettons de ne pas voir parmi nous, a dit avec raison que cette situation constitue pour notre époque une véritable humiliation. (*Hear! hear*).

Cette humiliation, nous avons entrepris de la faire cesser, et ce n'est pas à vous, Messieurs, qu'il faut démontrer que nous avons raison.

L'International Law Association s'est la première attelée à cette grande tache, et voici qu'elle a pour alliées sur le Continent treize Associations nationales fédérativement unies et que trois nouvelles Associations sont en voie de formation.

Le sujet dont nous nous sommes occupés tout d'abord, l'abordage et le sauvetage, étaient assurément de ceux où les conflits de législations et de compétence sont des plus nombreux et des plus fâcheux.

Déjà en 1900, à notre conférence de Paris, l'accord s'était presque établi. L'éminent chef de la magistrature anglaise, Lord Alverstone, avait pris l'initiative d'une proposition de traité, et il fut décidé qu'un avant projet de traité serait formulé par une commission qui se réunit à Londres, en juin 1901, sous la présidence de Lord Alverstone. La rédaction qu'elle arrêta fut soumise l'année d'après à notre assemblée de Hambourg, et adoptée après une discussion approfondie. L'œuvre ainsi préparée ne pouvait donc être suspecte en Angleterre.

La délégation belge fut chargée de prier notre Gouver-

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nement de prendre l'initiative d'une réunion diplomatique, et nos démarches furent accueillies avec empressement.

De là, Messieurs, la conférence qui s'est réunie à Bruxelles au mois de février dernier et sur les travaux de laquelle on m'a demandé de faire rapport.

La Conférence a réuni des représentants de la Belgique, (il faut bien que je suive l'ordre alphabétique) du Congo, de l'Espagne, des États-Unis d'Amérique, de la France, de l'Italie, du Japon, de la Norvège, des Pays-Bas, du Portugal, de la Roumanie, de la Russie et de la Suède. Nous avons eu plusieurs séances et il doit m'être permis, puisque j'ai eu l'honneur de la présider, de dire que jamais on ne vit meilleur vouloir et plus sincère désir d'aboutir. Les rédactions proposées par nous ont été, en plus d'un point, améliorées, mais l'œuvre elle-même est demeurée intacte. Ce n'est pas qu'elle ait été définitivement adoptée, car plusieurs des plénipotentiaires n'avaient pas les pouvoirs nécessaires mais en s'ajournant au 1er septembre prochain, en vue de décision définitive, l'assemblée a arrêté et signé le protocole que voici :

PROTOCOLE

« Les Délégués soussignés, convaincus des grands avantages qu'à » tous les points de vue présenterait l'établissement d'un droit uni- » forme en matière d'abordage et d'assistance maritimes, et constatant » les dispositions favorables manifestées à cet égard au cours des » travaux de la Conférence par tous ses membres, sont unanimement » d'accord pour :

» 1° Soumettre à leur Gouvernement respectif, aux fins d'examen, » les projets préparés par la Conférence et qui sont ci-annexés ;

» 2° Suspendre les délibérations de la Conférence et les ajourner à » une date à proposer par le Gouvernement belge.

» Fait à Bruxelles, le 25 février 1905 » (1).

(*Suivent les signatures*).

(1) For the complete text of the Protocol, see page 87.
Voir le texte complet des protocoles à la page 87.

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Avant d'apposer sa signature sur le protocole, Monsieur le Ministre d'Espagne a exprimé le regret de ne pas voir les Républiques américaines de langue espagnole et portugaise représentées à la Conférence, et on n'y avait en effet invité que les puissances qui ont pris part à la Conférence de la Paix de la Haye. — Ce regret, aussitôt transmis au Gouvernement belge, a été immédiatement suivi d'invitations complémentaires et nous avons tout lieu de croire qu'au mois de septembre prochain, nous verrons siéger avec nous le Brésil, le Mexique, la Réplublique Argentine et les autres États de l'Amérique du Sud et du Centre.

La Conférence de Bruxelles constitue par elle-même, MM. un résultat considérable. C'est la première fois que la diplomatie s'est réunie en congrès pour arrêter une législation uniforme en matière maritime, et les dispositions consignées au protocole dont je viens de donner lecture, nous permettent de compter fermement sur le succès. Ce sera une date importante dans l'histoire du progrès, du développement de ces idées de solidarité et de bonne entente entre les hommes qui font l'honneur de notre temps.

Mais il nous reste un immense regret. Trois grands pays d'Europe n'étaient pas représentés à Bruxelles ; ce sont l'Autriche-Hongrie, trop occupée en ce moment par d'autres intérêts, mais dont on peut, je pense, escompter l'accession, — l'Allemagne, dont les dispositions semblaient favorables et qui a été vivement sollicitée par la puissante Association maritime allemande, mais qui a fait dépendre son consentement de celui de l'Angleterre, — et enfin cette dernière.

Chez vous, cependant, nous pouvions compter sur des appuis aussi puissants qu'énergiques. Non seulement, il s'agit de projets de lois rèdigés à Londres, sous la prési-

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dence du plus haut magistrat de ce pays ; non seulement, la Chamber of Shipping, cette institution aussi puissante qu'admirablement dirigée, a donné à diverses reprises son entière approbation aux projets de traité soumis à la Conférence et des jurisconsultes éminents comme notre président, Sir William Kennedy, et Sir Walter Phillimore, ont déclaré (notamment au Congrès d'Anvers en 1903) qu'il n'y avait pas d'objections à faire aux quelques modifications de détail qu'entraîneraient les traités proposés pour le droit anglais, infiniment moins qu'aux législations des autres nations, mais il y avait mieux encore. N'a-t-on pas vu toutes les forces vives de ce pays, en ce qui concerne les choses de la mer, se réunir pour apporter au Gouvernement l'expression d'un sentiment unanime. Je veux parler de l'imposante démarche faite chez Lord Lansdowne, par les représentants du General Council of the Bar, de la Law Society, du Comité de Lloyds, de la Chamber of Shipping, de la Chambre de Commerce de Liverpool, de la Liverpool Steamship Owners' Association, de la North of England Steamship Owner's Association, de la Chambre de Commerce de Glasgow, de la Glasgow Shipowners' Association et de l'International Law Association.

Ces délégués ont été bien reçus, Messieurs, bien écoutés, et je ne sache pas qu'il leur aurait été faite aucune objection. Jamais d'ailleurs à ma connaissance, il n'en a été formulé une seule et l'on a même dit que l'accueil de Lord Lansdowne avait été sympathique. Mais il ne s'en est rien suivi et à la Conférence de Bruxelles, la place de la Grande-Bretagne est demeurée vide. Elle ne s'est pas même fait représenter *ad audiendum,* comme on l'avait d'abord annoncé. Et cependant, en matière maritime, on conçoit à peine un grand et généreux effort auquel vous demeureriez

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étrangers. Votre pavillion ne couvre-t-il pas à lui seul la moitié des échanges qui se font par mer ?

Un étranger n'a pas à scruter les motifs qui ont dicté l'attitude du Gouvernement britannique, mais je me permets d'en dire quelques mots, puisque notre Président a annoncé hier qu'une nouvelle démarche allait être tentée. D'ailleurs, un fait nouveau, tout récent et d'importance considérable, me rend l'espoir : Il y a quelques jours a paru un *livre bleu* où votre Gouvernement annonce l'intention de réunir, à Londres, je pense, une conférence en vue d'établir entre l'Angleterre et les Colonies, des lois maritimes uniformes.

« Le Gouvernement de Sa Majesté, dit le Right Hon. P. Littleton, est arrivé à cette conclusion que si la marine marchande engagée dans le commerce d'outremer, doit prospérer dans l'avenir, comme elle l'a fait dans le passé, elle doit, dans toute l'étendue de l'empire être soumise à un même code, autant que le permettra la diversité des circonstances, et pour arriver à la rédaction de semblable code, il faut bien, ajoute-t-il, que les principes et les applications les plus importantes soient réglés de concert par le Gouvernement impérial et par les Gouvernements coloniaux. »

On ne peut mieux dire. Mais s'il en est ainsi quant aux relations maritimes de l'Angleterre avec ses colonies, combien n'est-ce pas plus vrai encore pour vos relations, assurément cinq ou six fois plus nombreuses, avec les pays étrangers ? Si dans le premier cas, une seule et même législation s'impose aussi impérieusement que le dit l'Honorable M. Littleton, comment le même progrès pourrait-il être indifférent, alors qu'il s'agit de lui donner une portée bien étendue ? S'il est bon que le navire anglais rencontre la même loi à Liverpool, à Sydney, à Singapore, n'y aurait-il pas avantage à ce qu'au Hâvre, à Hambourg, à Anvers, à Gênes, à Rotterdam, à New-York, à Buenos-Ayres, il ne

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fut plus obligé de se soumettre à des législations différentes, et par cela même, parfois pleines de surprises? N'y aurait-il pas un plus grand progrès encore à ce qu'en cas d'abordage de navires en pleine mer, il n'y eut plus que des règles uniques, excluant tout conflit et supprimant de coûteuses procédures ?

Les dispositions qui viennent d'être annoncées par votre Gouvernement m'inspirent donc confiance, et comme le concours de l'Allemagne dépend de celui de la Grande-Bretagne, il suffirait d'un mot dit à Londres pour que la Conférence de Bruxelles devînt, pour quelques heures, le Parlement maritime du monde.

Et pourquoi n'aboutirions-nous pas à ce résultat, naguère encore inespéré ?

Dirait-on que dans les avant-projets de traités soumis à la Conférence diplomatique, il n'aurait pas été suffisamment tenu compte du droit anglais ?

S'il en était ainsi, les observations de votre Gouvernement à la Conférence auraient été certainement prises en considération, et rien d'ailleurs ne pouvait se faire sans lui, puisqu'un traité diplomatique exige l'assentiment de toutes les parties.

Mais je crois pouvoir affirmer qu'il n'en est rien.

Déjà, j'ai eu l'honneur de rappeler que dans le travail préparatoire des deux avant-projets, les intérêts anglais avaient été bien représentés et défendus et que la rédaction des textes soumis au vote, a été arrêtée sous la présidence de Lord Alverstone, chef de votre magistrature et le plus éminent de nos collègues.

Aujourd'hui, les textes adoptés ont été publiés et chacun peut en vérifier la portée. Le traité sur l'assistance ne renferme rien qui s'écarte du droit anglais. Tout au moins n'y pourrait-on relever que la disposition nouvelle arrêtée par la Conférence diplomatique et qui élargit l'obligation

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de l'assistance. Cette obligation est depuis longtemps proclamée par vous en cas d'abordage. Les premiers, vous avez voulu que l'aide devînt alors un devoir strict et d'autres législations, notamment celle de l'Italie, ont généralisé cette règle en l'étendant à tous les cas Devant un péril de mort, il n'y a plus d'étranger, il n'y a plus d'ennemi, il n'y a que des hommes qui ont besoin de secours et qui, par cela seul, y ont droit. Ces dispositions, dont il n'est pas besoin de relever le caractère, ont été, à la conférence de Bruxelles, l'objet d'un vote presque unanime et ce n'est certes pas là ce qui pourrait soulever quelque objection dans ce noble pays d'Angleterre, où les marins se sont toujours conduits en héros. (*Hear! hear!*) Le traité met d'ailleurs le propriétaire du navire à l'abri de toute recherche, dans le cas où son capitaine, son équipage, manqueraient à leurs devoirs d'humanité.

Quant au traité sur l'abordage, il est, sur presque tous les points, conforme au droit anglais, et il impose celui-ci aux autres pays, quant à des questions de grande importance. C'est ainsi que jusqu'ici votre législation seule fait suivre par la cargaison le sort du navire. Si celui-ci, à raison d'une faute commune, n'obtient que la réparation de la moitié du dommage subi, la cargaison doit se contenter du même règlement. Rien de plus juste et de plus pratique. Et cependant, toutes les autres législations accordent en pareil cas à la cargaison un recours solidaire contre les deux navires, ce qui peut rendre illusoire la clause d'exonération de responsabilité stipulée dans les connaissements. Le texte adopté par la Conférence diplomatique généralise les prescriptions de votre loi et c'est certainement là un avantage de sérieuse importance.

En ce qui concerne les rapports entre les deux navires, vous vous étiez depuis longtemps écartés du système dur et injuste qui écarte tout droit à indemnité du moment où

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la partie lésée a commis une faute, si minime qu'elle soit. Mais la plupart des législations modernes ont fait, dans la même voie, un pas de plus, en permettant au juge de tenir toujours compte de la gravité respective des fautes. Ce système, aussi pratique qu'équitable, a reçu en Angleterre l'approbation de la Chamber of Shipping et de nombreuses associations d'armateurs. Il a été éloquemment défendu à Liverpool même, par Sir John Gray Hill, et Sir Walter Phillimore a déclaré à la Conférence d'Anvers qu'à son avis l'Angleterre pouvait s'y rallier à raison des nombreux sacrifices qui ont été faits, sur d'autres points, à sa législation.

Là encore, il ne semble donc pas qu'il puisse s'élever quelque difficulté.

Et en dehors de ce point, il n'y a plus guère que la question du pilotage obligatoire, à propos de laquelle, en vue d'une loi uniforme, il faut bien choisir entre deux systèmes absolument contradictoires. D'accord avec beaucoup d'entre vous, on s'est prononcé en faveur de la thèse qui traite le pilote comme tout préposé.

Vous voyez, MM. que les traités proposés n'imposeraient à l'Angleterre aucun sacrifice sérieux d'idées ou d'intérêts et ce seraient au contraire les prescriptions qui vous régissent, qui, pour la plupart, deviendraient d'obligation universelle.

C'est une raison de plus pour que je veuille espérer MM., que le Gouvernement Impérial s'y ralliera.

Même si sans son concours, les règles uniformes nouvelles sont adoptées, comme il y a lieu, aujourd'hui, d'y compter, elles seraient applicables aux navires anglais dans la plupart des cas. Ils n'y seraient pas seulement soumis dans les eaux territoriales, rades et ports des pays de la nouvelle Union maritime, mais les tribunaux de ces pays devraient appliquer les mêmes règles dans tous les

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cas de leur compétence. Et ce n'est pas exagérer que d'affirmer que dans les cinq sixièmes des cas, ce serait au pavillon anglais que serait appliquée cette législation uniforme, à l'élaboration de laquelle votre pays aurait refusé de participer. Cela ne marque-t-il pas, à soi seul, l'importance de la question pour votre grand pays? Et quand, dans cette assemblée, je vois autour de moi, les sommités du barreau, de la magistrature et du monde des affaires, animés de la même conviction, ne puis-je exprimer le sérieux espoir que de telles influences, mises au service d'une cause juste entre toutes, sauront se faire entendre et que bientôt, en deux matières importantes, la mer ne connaîtra plus qu'une loi, une seule et même loi, la première du Code maritime du monde.

Translation.

In a reunion such as this, it would be superfluous to insist on the importance of the object which brings us together. Intercourse between nations, increasing every day, has brought matters of international law into greater and greater prominence. Yet in no respect is this more important than in relation to oversea commerce. The ocean, made by nature for the union of mankind, is cosmopolitan. Yet ships crossing the seas come with the capital they represent, their cargoes and assurances, under twenty different laws, according to the circumstancee of the voyage—laws which often are totally in conflict. As Lord Alverstone said at our Paris meeting, such a state of things is, for an epoch like ours, a real humiliation. That humiliation we have set ourselves to remove — (*applause*). It is for us to show the world that we are in the right — (*hear, hear*). The first body to take up this great task was the International Law Association. At present the International Maritime Committee, with thirteen national associations in federation, have, after agreement with the International Law Association, specially devoted themselves to this task. The subjects to which our Committee first addressed itself were collision and salvage points on which conflicts of laws were most numerous and most embarrassing. In our conference at Paris in 1900 Lord Alverstone, Lord Chief Justice of Engeland, took the initiative by

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proposing that a draft treaty on these points should be discussed by a sub-commission, which met in London, under the chairmanship of Lord Alverstone, and afterwards submitted to the conference. Its report came before our conference at Hamburg, and, after a searching discussion, was adopted The Belgian delegates were requested to ask the Government of Belgium to take the diplomatic initiative. The suggestion was welcomed. Hence the diplomatic conference which met last February in Brussels. At that conference there were represented : Belgium, the Congo State, Spain, the United States, France, Italy, Japan, Norway, Holland, Portugal, Roumania, Russia, and Sweden I, myself, had the honour to preside. Some of the plenipotentiaries had not the power formally to accept the conclusions adopted, but subject to that, the conference agreed on the protocol as follows : —

« The undersigned delegates, convinced of the great advantages » which would result in all respects from the establishment of a » uniform law as to collisions at sea and marine salvage, and having » regard to the favourable dispositions shown as to this during the » labours of the conference by all its members, are unanimously » agreed : —

» 1. To submit to their respective Government for consideration » the drafts prepared by the conference hereto annexed.

» 2. To postpone the deliberations of the conference and to adjourn » to a date to be proposed by the Belgian Government. (1)

The Spanish Minister expressed regret that the South and Central American republics were not present, but the Belgian Government forthwith sent invitations to the Governments of those States, and we hope at our conference in the autumn to see their representatives with us. Taken even by itself, the Brussels Conference indicates a very important result. It is the first time diplomacy has met in congress in order to establish a uniform law in maritime matters, and I think we may count upon success. If so, it will be an important date in the history of progress, and the development of solidarity and goodwill between nations — (*hear, hear*) Still we have to regret that three great European Powers were not represented at this conference — Austria-Hungary, on whose adhesion, however, we think we may count : Germany, whose Government also seems favourable and has been

(1) The complete text of the Protocol is to be found on page 87 of this Report.

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strongly urged to accede by the Maritime Law Association of Germany, but has made its support dependent on that of England. In England itself we can count on the energetic and powerful aid of eminent jurists, including the Lord Chief Justice, who presided over the sub-Committee which has drafted the treaty, of the Chamber of Shipping. Sir William Kennedy and Sir Walter Phillimore have declared — notably to the Congress of Antwerp in 1903 — that there were practically no objections to be made by an English lawyer to the treaty. Looking at the weight which England carries in maritime affairs, an effort was made to impress on the British Government the importance of unanimity I refer to the imposing deputation to Lord Lansdowne, in which part was taken by the General Council of the Bar, the Law Society, the Committee of Lloyd's, the Chamber of Shipping, the Liverpool Chamber of Commerce, the Liverpool Steamship Owners' Association, the North of England Steamship Owners' Association, the Glasgow Chamber of Commerce, the Glasgow Shipowners' Association, and the International Law Association. The deputation was received sympathetically, Lord Lansdowne did not raise a single objection. Nevertheless, at the Brussels Conference, the place of Great Britain remained unfilled. However, we can hardly conceive that Great Britain, which transacts one half of the whole sea-borne commerce of the world should stand estranged from this great and generous effort. It is not for me to discuss the motives which have influenced the British Government in its absention, but within the last few days there has appeared a Bluebook in which the Government states its intention of summoning to meet in Londen a conference to formulate a uniform maritime code for Great Britain and her colonies. The Right Hon. Mr. Lyttelton has declared his opinion that such a code for the British Empire is necessary to the future prosperity of British shipping. Now if that be necessary in the maritime relations between Great Britain and her colonies, evidently it is much more necessary in the relations, five or six times as numerous, between Great Britain and foreign countries. If it be important that a British ship should find the same maritime law at Liverpool, Sydney, and Singapore, is it not at least as important that she should find the same law at Hamburg, Antwerp, Genoa, Rotterdam, New-York, and Buenos Ayres, and that she should not be obliged to submit to varying obligations often full of surprises? Would it not be an even greater step forward if in the cases of collisions on the high seas there were for ships of all nations and in all waters a uniform code accepted by

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internationl equity and avoiding conflict and costly litigation? The proposal, therefore, just announced by the British Government inspires me with confidence, and as the decision of Germany depends on that of Great Britain, it needs but a word spoken at London to make the Brussels Conference in September for a few weeks the Maritime Parliament of the world. Let me state in a few words the effect of the treaty submitted to the Diplomatic Conference. The treaty on salvage does not embody anything not now covered by English law. English law first made the obligation to stand-by a legal one. Other countries, notably Italy, have adopted the same rule. These dispositions were accepted by a pratically unanimous vote. The treaty besides shields the owner from attack in cases where the master may be found wanting in fulfilment of these duties of humanity. As to the treaty on collisions, it follows on nearly all points the law of England, and introduces this law in the other legislations in respect of some points of great importance. Until now English law alone, in case of both to blame, makes the cargo follow the risk of the ship. If the ship, by reason of both parties in a collision being to blame, recovers only part of the damage the cargo owner must in England content himself with the same proportion. Nothing is more just or more pratical. Yet all other laws in such a case give the cargo owner recourse in full against the owners of both ships, a proceeding which might render illusory the clause of exoneration in the bill of lading. The text adopted by the conference, however, generalises the provisions of the English law, an advantage of real importance. As regards relations between two ships, English law long ago eliminated the hard rule which refuses all right of indamnity to an injured party, if that party be found in fault, however slightly. But most modern laws have taken in the same direction a step further, allowing the Court, if she thinks fit, to take into account the relative gravity of the blame. This system, as workable as it is equitable, has in England received the support of the Chamber of Shipping, and of all shipowners' associations. It has been eloquently defended here in Liverpool by Sir John Gray Hill, and Sir W. Philimore expressed in Antwerp the opinion that, in view of the concessions made on so many other points to English law, England should in turn make a concession in regard to apportionment of blame. Beyond that point there is only the question of compulsory pilotage, in regard to which it is necessary to choose between two absolutely contradictory systems, but many English authorities have declared in favour of the principle which treats the pilot like any other servant. You see, there-

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fore, that the treaty as proposed would impose on Great Britain no serious sacrifice either of opinions or interests. On the coutrary, the provisions which rule here would become, most of them, of universal obligation. That is one reason more why I hope that the Imperial Government wil come into line with other nations. If, however, this code be adopted by other countries without British concurrence (as we believe it will) they would be applicable to British ships in most cases, not only in territorial waters, and in the ports of the countries in this maritime union, but by the courts of those countries wherever they have jurisdiction. Without exaggeration, in five-sixths of the cases this law will be applied to ships under the British flag, notwithstanding that Great Britain may have refused to take part in formulating it. Does not this show the importance of the question for Great Britain? And when in this assembly I see around me the highest personalities of the Bar, the magistracy and the business world, all animated by the same conviction, may I not be allowed to express the hope that this influence, placed at the service of a cause eminently just, will advance it to success, and that soon on the two important subjects of collision and salvage the sea will have but one law, the beginning of a code for the world (*applause*)

The PRESIDENT : I am sure, gentlemen, we are all very much indebted to the distinguished president of this Association for what he has told us with regard to the present position of a very important matter. I will now ask Mr. T. F. Harrison, the chairman of the Liverpool Steamship Owners' Association, to propose a resolution which I know he intends to do.

Mr. T. F. HARRISON (president of the Liverpool Steamship Owners' Association) : Although our friends from abroad are not directly interested in this matter, we feel that though not directly interested we have their sympathetic feeling. I think that the members present, and in particular those members who represent the mercantile interests of Great Britain, are bound to do all that lies in

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their power to promote the carrying into effect of the conclusions arrived at in previous conferences. These conclusions are embodied in two draft codes—the one relating to Collisions at Sea, the other to the Law of Salvage. With this object in view I beg leave to move the following resolution : —

RESOLUTION

« That the representatives of the British shipowners, merchants, and underwriters attending this conference are of opinion that in the interests of the international commerce of this country it is of the first importance that his Majesty's Government should be represented at the International Conference convened by the Government of Belgium to consider the draft codes relating to collisions at sea and salvage.

That the secretaries are respectfully requested to submit a copy of this resolution to his Majesty's Government. »

« Les représentants des armateurs, négociants et assureurs britanniques présents à cette conférence, sont d'avis que dans l'intérêt du commerce international de ce pays, il est de la plus haute importance que le Gouvernement de Sa Majesté soit représenté à la Conférence Internationale convoquée par le Gouvernement belge en vue d'examiner les avant-projets de traités sur l'abordage et l'assistance en mer.

Les secrétaires sont chargés de soumettre respectueusement une copie de la présente résolution au Gouvernement de Sa Majesté. »

My remarks that I intended to put before you have been almost entirely covered by what M. Beernaert has given in his address. I would remind the committee that, in pursuance of the resolution moved by the chairman at Antwerp in 1903, a deputation fully representative of the mercantile interests of Great Britain waited upon Lord Lansdowne, the Foreign Secretary, in March, 1904. This deputation asked that His Majesty's Government might be represented at the International Conference convened by the Government of Belgium for the purpose of considering

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these two codes, and to be held in Brussels I think in September this year. Our Foreign Secretary has not up to the present, seen his way to make any such reply as would be satisfactory to this association; in fact he has not yet named a representative to that conference. As a shipowner, I may say as a shipowner interested in two points of view, for my firm take a very considerable amount of insurance on their own steamers at their own risk, so that we are looking at it practically from the underwriters' as much as the shipowners' point of view — we think that what Mr Balfour said at a recent meeting, that the less Kings and Parliaments interfere with business the better; but there are necessarily, of course, exceptions to this rule. We have, without the assistance of either Kings or Parliaments, and mainly by the efforts of the predecessors of this Committee, been able, under the York-Antwerp rules, to establish internationally the rules of general average. We were able to settle this branch of international law on fair and equitable principles, without the assistance of our rulers, because we could embody those principles in our contracts for carriage by sea. We cannot, without the assistance of our Kings and Parliaments, establish international rules regulating our responsibilities in the event of our vessels being in collision, or in the event of their having either to accept or to render salvage services. We ourselves cannot establish such rules because necessarily these responsibilities do not arise under contracts, and we have, therefore, no opportunity of stating the principles which we think fair and equitable, and by which we would be content to be bound. If we could as shipowners make the amounts we are to receive or to pay for salvage services the subject of bargain in every case of disaster there would be little or no necessity for rules. It is obviously impossible for us to settle before-

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hand, as a matter of contract, what are to be our liabilities in the event of our coming into collision with someone of the many vessels belonging to our own and other nations which our vessels meet with on their voyages. It is of the first importance, in the interests of international trade, that these liabilities be reasonable ; that they be clearly defined ; and that they be the same in all ports and on all seas. Our freights and our insurance premiums are now largely determined by international competition, and no nation can afford to embarrass its shipping with regulations and penalties from which their foreign competitors are free. To fix our freights and to arrange our insurances to the best advantage of both ourselves and our customers, the shippers, we must know with certainty the extent of our obligations both in our own ports and in the ports of other countries. Now, sir, I take it that it was these considerations which led this Committee to devote so much time, and so much care to the framing of the two codes relating to collisions and to salvage. They are incidents to wich the most careful of us are subject, and if we cannot learn how to escape them it is of the first importance that we should know clearly and precisely the responsibilities they entail. The codes are based, as I understand them, on the international customs which we,the shipowners and merchants of all nations,have established, with the assistance of our judges and lawyers, for the due conduct of our business. They secure uniformity on the points upon which, during their growth, the customs of nations have varied. They secure certainty in all cases. I can understand his Majesty's Government hesitating to join any International Conference convened for the purpose of considering the incidents of international trade generally. I should be inclined to attribute

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such reluctance to the diffidence that I have already alluded to, as embodied in Adam Smith's words, that the less Kings and Governments interfere with business the better. But in this conference we have no such general rule. It is specific. It is called to consider codes which have been prepared by the representatives of the shipowners and merchants and underwriters of all nations, with the help of the lawyers of all nations. These codes therefore embody the wellconsidered opinions of all the interests they affect, and I can conceive no reason why his Majesty's Government should not join with the Governments of other nations at the coming conference at Brussels, and adopt them if they be found just and reasonable. I can see no reason why his Majesty should not send a representative. It has been foreshadowed in the King's speech at the opening of this session that we are to have a Minister of Commerce. Can anyone imagine a more suitable starting ground for the Minister or one of his secretaries than to attend at this conference to learn not only what are the views of the English people whom he will have to serve hereafter, but more especially to learn the views of those gentlemen who have given great trouble and expense of time to these meetings to let the world know what their views are on this subject. I move the resolution which I have already had the pleasure of submitting to you.

Mr. English Harrison, K. C. (London). It beg to second the resolution.

As I had the honour of attending before Lord Lansdowne on the deputation which waited on him a year or so ago, I only propose to occupy your attention a very few moments while I cordially approve of and support the resolution that has been moved. It is the fashion of our

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country not at once to yield to representations which are made to a Government department. I think we ought certainly to proceed and again endeavour, if we can, to approach Lord Lansdowne, or whoever the Minister for Foreign Affairs may happen to be, with a view to induce him to send a delegate to the International Conference on these matters. I do not by any means myself despair of sooner or later bringing the Government into line with our desires, and getting the Minister of Foreign Affairs for the time being to assent to the proposition which we are endeavouring to lay before him. I only desire to say that because, as I happened to be before Lord Lansdowne on the occasion in question, I think one can form some sort of opinion of the views which are pressing upon the Government at the present time. I think they thought that perhaps it was a little premature to come before them at the time when we did, but I by no means despair of inducing them to alter their present view and to fall into line with our present resolution.

Sir ALFRED JONES, K. C., M. G. (Liverpool) : As far as seconding or supporting this resolution is concerned, I feel there is no difficulty in getting your support. Now, as far as the commerce of this country is concerned, I may fairly claim to represent that. There is no doubt the unification of laws and simplicity will lead to a better state for the people of this country. Of course, you know, as far as our Government departments are concerned, they are not always very quick to move, but I feel certain myself if we represent this matter fairly to Lord Lansdowne we shall get his support, and we are entitled to have it. There is no doubt that so far as sending a representative to this conference is concerned, there is not the slightest liability to this country. A man goes, listens, and comes back, and

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reports to Parliament, and nothing is binding till it gets to the House of Commons. We run no risk. There is another thing that occurs to me — if we English people stand aloof, it is not impossible that these other nations might make a law to themselves, and a combine there might be very awkward for us. It would be far better for us to make friends with our competitors in this matter. There could be nothing better than to make the law uniform for the world. I believe this is the beginning of an understanding in international law which might lead to many more understandings in international law. I feel certain the shipping people and the merchants of this country and those concerned in the world generally will greatly benefit by the views of this conference. We are in the hands of very capable men from all parts of the world. We have very good representatives on our own part, on the part of the British, and I feel great good will come out of these things you gentlemen are receiving here now.

Mr. CHARLES MC ARTHUR, M. P. (Liverpool) : It gives me great pleasure to say one or two words in support of the resolution which has been so ably and eloquently suggested by Mr. Beernaert, and so ably seconded and supported by the members of the conference who have spoken. It is a great matter of regret to me that the Government of the United Kingdom has so far not seen its way to take part in the movement which is now going on, to reconcile the divergencies of the laws of the various nations in maritime matters. Now it may be asked what is your ideal. I think our ideal is this — that which we aim at is this : That the ships of the various nations we find upon the ocean and also in the various ports in the different countries of the world, that they should have one law prevailing in maritime

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matters. There was originally a law as we know, in many respects a common law of the sea, but that common law of the sea has been differentiated by the tribunals of the various nations. Now Mr. Harrison has quoted the words of an eminent writer who said that the less Kings and Governments interfere with trade the better, but what we are now asking the Government to do is not to interfere with trade, but to remove interferences with trade — to remove those obstacles which they have placed in the way of a common understanding between the shipowners and merchants af all nations. Now, my lord, in approaching the British Government you have to remember that they are a constitutional Government, and in order to be succesful you must assure them that public opinion is behind them. I think I may safely say that public opinion in Great Britain is favourable to the Government participating in this work. In support of that I have only got to point to the deputation to which my friend who has just spoken, Mr. English Harrison, referred, and to remind him that the deputation on that occasion consisted of representatives of shipowners, merchants, and underwriters. As regards underwriters, it was so large a concern that the chairman of Lloyd's was present on that deputation. It was also accompanied by the most distinguised members of the English Bar, and therefore I feel I may safely say that English legal, commercial, and shipping opinion is in favour of the Government taking some action in this matter. Now, reference has been made to Lord Lansdowne. In my opinion Lord Lansdowne personally has no objection to take part in this conference. So far as I can learn the objections come from another quarter. I believe the objections come — without being personal I may say — from gentlemen who are at the head of the judicial system of this country, and I have a hope that the opinions of the

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eminent judges and members of the Bar who have spoken on this subject will have some influence with the heads of our judicial system, and will lead them favourably to acquiesce in this proposal. Lord Lansdowne, in the answer which he gave to me at that deputation, and in a letter which he wrote to me, said that the reason why the British Government could not see its way to join us was that it had not been in accordance with precedent for the British Government to take part in conferences of this kind. I am afraid we have to admit that that is correct. The British Government has taken part in conferences such as that at Weshingtong to establish an international rule of the road at sea, but I do not think the British Government has hitherto taken part in a conference which concerns the general law of this country; but if that is the case, I venture to say that it is a bad precedent, and the sooner the British Government makes a new departure the better — (*applause*). We, as the chief maritime nation of the world — and we are proud to call ourselves that — ought to be in the van of a movement of this kind, and not to lag behind. Our maritime supremacy, I venture to think, is not entirely for the purpose of amassing wealth, or for self aggrandisement, but is for the purpose of leading a movement like this and promoting the cause of civilisation amongst ships of all nations. No one is better qualified, I venture to say with all humility — there is no Power better qualified than Great Britain to take the lead in this matter through its world-wide commerce, and I think other nations will cheerfully recognise the right of our nation to have the predominating voice in this matter. All my experience has gone to show that on these occasions the representatives of a foreign country do not insist upon their right of voting. They feel they can do nothing without Great Britain, and they desire to bring Great Britain with

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them, and so far as possible they accommodate themselves to the views maintained in Great Britain. At all events they give us a kind hearing and take our initiative in these matters. Now the British Government have done this : Although they have said we cannot see our way to appoint a representative to this conference, we will take care officially to obtain a report of the proceedings, and will give that report our careful consideration. We want the British Government to go one step further and to appoint a representative to attend at the conference — the adjourned conference — at Brussels in September, to take part in the conference. We do not wish this representative to have power to bind the country — none of the delegates to that conference have power to bind their Governments — but we ask the British Government to send a delegate to that conference to show their sympathy with it, to deliberate and to report, and the Government will be perfectly free either to accept or refuse the conclusion which may be come to by that conference. Surely there is no danger in that. Surely that is the most reasonable course to adopt, and I may quote the words of Sir Walter Phillimore at Antwerp, which ought to carry weight : — « The attitude of the British Government is not only churlish, but may even seem ridiculous, when one recollects that the draft-treaty on salvage embodies the English law without substantial, I believe even without formal, modification ; while there are only three modifications of English law in the draft-treaty on collision ; and only one of these is likely to give rise to dispute. » And further, Sir Walter expressed the opinion that this modification — the question of both to blame — was « one which Great Britain might accept in return for the many concessions to her views. » Now, I appeal to the English representatives present to use every endeavour to

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get our Government to send a delegate to the conference on September 1. We must make a combined effort, a long pull, a strong pull, and a pull together, and I think we shall win in the matter, because our request is only reasonable, and I would appeal for the support of the members of the Press, which has such a powerful influence in this country, and which always takes à high view of this question. If they are satisfied with the reasonableness of our request they can use their powerful aid in influencing the Government, through the medium of public opinion in this country, to adopt the course which we so greatly desire to adopt — the course which is so greatly needed, and which will tend, I believe, to benefit not only British shipping, but the shipping of all countries in the commercial world, and will tend to promote ideas of humanity, ideas of tranquillity and peace, and ideas of mutual consideration throughout the world.

Mr. F. SHAD WATTS (London) : On behalf of the Chamber of Shipping of the United Kingdom, I beg most heartily to support this resolution. I do not think I can add very much to what the previous speakers have said, but I do not think it has been remarked yet how on this and several previous occasions picked delegates of very important interests have been sent here and have expended a great deal of their valuable time with the view of bringing about a common object. I think that argument itself is sufficient to convince his Majesty's Government that they ought to appoint a reprentative to attend this forthcoming conference and I have great pleasure in supporting the resolution.

Mr. LEMON (London) : As representative of the Institute of London Underwriters, I beg leave most heartily to support this resolution. I feel convinced that if

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representations are made to his Majesty's Government in the proper quarter, they will see their way to conform to the wishes of this conference.

Mr. DOUGLAS OWEN (London) : I have great pleasure in supporting this resolution, and I hope to do so in quite a few words. I am here with no mission to represent anybody. I speak for myself, but I speak with considerable knowledge of the subject to which I address myself. I am one of those against whom the existing perplexities and divergencies of the law press most heavily. I am brought daily into contact with difficulties which arise such as I and those occupying positions similar to my own suffer from, and therefore I ardently desire any legislation, whether it be British or foreign, which shall remove the disadvantages from which I and underwriters generally are so largely sufferers. The theory, of course, is this is a matter concerning shipping and concerning cargo. That theory is correct, but underwriters are the ultimate focus on whom the troubles of the shipowners and cargo-owners descend. I do not mean to say that the underwriters relieve the cargo-owners or shipowners—more especially shipowners—because they have to bear their own burden, but underwriters have to bear the burden for all. It is the underwriters who have to pay the costs of the divergencies and perplexities of the law, and it is the underwriters who pay the heavy costs, not merely in money, but what, I think, is often of greater matter, in time. Any legislation that will lift from the shoulders of underwriters the burden of wasted money, and of no less wasted time which at present weighs upon them, will be welcomed by underwriters. Mr. President and gentlemen, if a ship can be said to live, it lives half its life abroad. It is in foreign ports that liabilities are incurred ; it is in foreign ports in which

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they are called upon to defend their interests. Every foreign port—rather every foreign country, in a sense—has British shipping at its mercy. A foreign country that chooses to pass legislation affecting the interests of its own shipping cannot avoid—and possibly does not desire to avoid—affecting British shipping. We are in this position —that owning half the shipping of the world, we are at the mercy of the legislation of every foreign country to which our ships happen to go. We were told yesterday, and told correctly, no doubt, that half the shipping that trades to Antwerp is British, and probably half the shipping — I should think even more—that trades to Hamburg is British. How then can we look with indifference at legislation affecting shipping generally which may be passed in Belgium or Germany. Surely this is a question in which the British Legislature—a Legislature having the great responsibility of the representation of half the shipping in the world—surely this is a matter in which the British Legislature should not rest content to be idle, for I say it is to be idle, or to be something more nearly idle, to say « All we will do is to ask for a report of the proceedings, and we will read it. » Is that a position which should be satisfactory to the greatest maritime country of the world? Surely, as one of the last speakers said, it is incumbent upon us—the greatest maritime Power, the greatest maritime commercial Power the world has ever known—surely it is not for us to be dragged at the cart tail of foreign legislation. Surely it is rather for us to set a lead. It may be objected that the expression I use, « Dragged at the cart tail of foreign legislation » is wrong—is not discreet. But, gentlemen, it is true. How can our great industry of shipowning be protected from the legislation of even the smallest and least important of foreign countries if our Government stands aside and does nothing to intervene

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until it is too late to intervene. Surely that is not a position which is becoming to our Government, and which would commend itself to ourselves. I fully agree, of course, in not asking the Government to take the responsibility — for we recognise it as a great responsibility — of representing us abroad; we should not expect them to decide to go there and decide off-hand as to what decision they shall ultimately come to. We know ourselves, none better, what are the difficulties attending a discussion of this kind. It would be wrong and foolish to expect underwriters to decide off-hand what so many experts find a difficulty in dealing with in a long discussion, but surely taking part in legislation is a very different thing to taking part in a discussion or in supervision. I return to my position as an English representative of underwriters, and, speaking once more for myself, I say we have a right—at any rate we claimed the right as underwriters—to look to our Government to protect our interests. It is underwriters who suffer under these inconveniences, and wo are made to bear these losses. We cannot protect ourselves, and therefore we do look to the Government, and we call upon the Government, to do something in protection of the great interests of British insurance — (*applause*).

Mr. Wm. Gow (Liverpool): I believe I am the only Liverpool underwriter at this meeting, and therefore I think it necessary to say that the abstention of Liverpool underwriters from this conference is not due to any want of sympathy with the ojects of the meeting, or to any depreciation of the results of such a meeting. Speaking for myself, I am exactly in the same position as Mr. Owen. I can only confirm what he has said, and assure the meeting that we are keenly alive to the importance of what is now proceeding. Anything that can be done to bring

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home to our Government the importance attached by the various commercial and insurance interests of the country to the movement now in progress should be done and should be done without further delay — (*applause*).

Mr. Wm. Rundell (Glasgow) : I desire, on behalf of the Association of Underwriters and Insurance Brokers of Glasgow, to support the motion that has been made in this case. Our being represented here to-day shows that we have the object of this conference at heart, and our desire to give it our support. The speakers that have preceded me have said all I propose to say on the matter, and I hope that the representations to the Government will have a good effect.

The President : You will observe that the resolution which has been proprosed by Mr. Harrison and seconded by Sir Alfred Jones is addressed only to one portion of this conference, viz., the representatives of the British shipowners, merchants, and underwriters attending, but I am quite sure that it has the sympathy of those who are here from other nations.

(*Traduction orale par* M. Louis Franck).

Monsieur le Président a fait remarquer à l'Assemblée que la résolution qui vient d'être mise au vote ne s'adresse qu'aux membres anglais de la Conférence ; ceux-ci devront donc seuls prendre part au vote. Mais il est convaincu que les membres continentaux y attachent aussi la plus grande importance et que la proposition a toutes leurs sympathies.

Il est donc entendu que seuls les membres anglais voteront.

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Mr. Justice Kennedy (President) : As it is intended to apply by its terms to that section, it is to that section

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that I shall address the usual question and ask them to say whether they affirm or disaffirm the terms of this resolution. I will ask those who are present here and referred to in the resolution representing British shipowners and merchants and underwriters to show that they are in favour of the resolution by holding up their hands? Are there any to the contrary? There ary none. The resolution is carried unanimously.

« That the representatives of the British shipowners, merchants and underwriters attending this conference are of opinion that, in the interests of the international commerce of this country it is of the first importance that his Majesty's Government should be represented at the International Conference convened by the Government of Belgium to consider the draft codes relating to colisions at sea and salvage,

and that the secretaries are respectfully requestedto submit a copy of this resolution to his Majesty's Government. »

« Les représentants des armateurs, négociants et assureurs britanniques présents à cette conférence, sont d'avis que dans l'intérêt du commerce international de ce pays, il est de la plus haute importance que le Gouvernement de Sa Majesté soit représenté à la Conférence Internationale convoquée par le Gouvernement belge en vue d'examiner les avant-projets de traité sur l'abordage et l'assistance en mer.

Les secrétaires sont chargés de soumettre respectueusement une copie de la présente résolution au Gouvernement de Sa Majesté.

The resolution is carried unanimously by the British members.

La résolution est adoptée à l'unanimité des membres anglais.

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Limitation of Shipowner's Liability

(Discussion continued)

Limitation de la Responsabilité des Propriétaires de navires

(Continuation de la discussion)

The President : We will now proceed to the further consideration, and I hope to a speedy conclusion, of the prolonged and careful discussion which we had yesterday upon the subject of the limitation of the liabilities of shipowners. I am happy to say from the communications that have been addressed to me that upon the only point at which there seemed to be a likelihood of serious difference affecting in any sense the principle of the proposed treaty, there is now a substantial agreement which I hope will be satisfactory to all nations here present at this meeting. I may only say in preface before the resolution is moved that we will take the clauses in order — that when we have dealt with the question which is involved in Article 1 and Article 6, there may still be some questions open with regard to details particularly such as that which was indicated by our friend M. Le Jeune yesterday, with regard the definition of « freight » and « net freight ». I think it is entirely for the conference to decide. I think that they will feel that if we

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can settle the other main points, the question of drafting in the details, including all those details, such as the better definition of the freight and net freight, should be referred to the sub-committee which will be appointed in the usual course of the policy of the conference by the Permanent Bureau. I think if we once settle the question of principle, then the question of the definition of freight and net freight — subject, of course, to the review of some future conference — may be discussed by those who are acquainted with the subject as a committee, and not here in open, because of the necessary time that it would take, and what I may call the necessary difficulty of mutual understanding which arises particularly in regard to proposals of terms of art — of special art terms, which may admit of a great many shades of meaning in different things. As you are aware, we are dealing at present with the first article, and a resolution will be moved which I will read to you when it is moved, and I have no doubt it will be much better explained by the speakers than by myself, and certainly it is never a good thing to explain things twice over.

Mr. Mc Arthur, M. P. (Liverpool) : I am already familiar with the agreement which has been substantially arrived at, but I have not seen the exact form which that agreement expresses. However it has been placed in my hands now, and I will read it. The purport of this proposal is to substitute for the first paragraph of Article I, the following words,— but perhaps I had better read the paragraph first which it is proposed to strike out : —

« When the owner of a ship is held responsible, according to the laws of the country, for the acts of the master and crew, or for the engagements entered into by the master in virtue of his legal capacity, his liability is for each voyage limited..... »

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The following are the words which it is proposed to substitute for that : —

« WHERE ANY DAMAGE OR LOSS —

« (1) IS CAUSED TO ANY GOODS, MERCHANDISE, OR ANY OTHER THINGS WHATSOEVER ON BOARD THE SHIP ; OR

« (2) IS CAUSED BY REASON OF THE IMPROPER NAVIGATION OF SUCH SHIP TO ANY OTHER VESSEL OR TO ANY GOODS, MERCHANDISE, OR OTHER THINGS WHATSOEVER ON BOARD ANY OTHER VESSEL ; OR

« (3) IS CAUSED TO DYKES, QUAYS, AND OTHER FIXED OBJECTS AS WELL AS THE REMOVAL OF WRECKS. »

These last words — the reference to dykes and quays — are taken from Article 6 in order to make the enumeration of the damages complete. Now may I just try to explain in a few words to the Conference the effect of this alteration ? First, it is intended by this alteration that the limitation of liability shall apply to all loss or damage which is caused by any ship, first to her own cargo — that is, that may be caused, by default in the performance of the contract of carriage, to the goods laden in the ship — and, secondly, it applies to damage which by improper navigation of the vessel may be caused to other vessels, or to the goods, merchandise, or other things on board such vessels. Then in the third place it applies to any damage that may be done by the ship to the works on land, such as docks, quays, harbours, or similar structures. So that the effect of this is to bring into the limitation of liability all damages that may be done by a ship, as I have said, either to her own cargo or other ships and their cargoes, or works on land. These are the damages to which, and to which alone, the limitation of liability is to be applied. The difference between this and the original proposal is that the words of the original proposal « engagements entered into by the master in virtue of his legal capacity, » are omitted. That

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is to say, that it will be left to the law of each particular country to determine how that liability should be dealt with. Of course, in our own country — England — the English law makes the shipowner responsible to an unlimited extent for contracts that may be entered into. He is responsible for the debts incurred by a master for supplying the ship with the necessaries for the course of the voyage, or expending sums necessary for the navigation of the ship, for supplying him, in the case of a steamer, with coal, for paying canal dues, and incurring all the expenditure incidental to navigation. For these things, according to our English law, the shipowner is responsible, and as it was put before you yesterday, it would be too great a blow fundamentally to change in our English law and to cast these personal responsibilities of the owner into the common fund, and to say that the shipowner's responsibility should be limited by the value of his ship and the amount of his freight, and to say that that would involve that if the ship went to the bottom, the creditors of the ship, even the creditors engaged in the ordinary course of the voyage, should have no recovery from the ship. I do not say that that is wrong— I do not say that those Continental nations who see fit to apply the limitation of liability to these contracts in that way are wrong; but I say that our law and practice are so firmly established that to enact that great and fundamental change would be impracticable, and this nation would be unable to go to such an extent. But I hope, if it is not necessary to take three steps, or two steps, surely you can take one step. We are willing to go with you in taking this one step — a most important step, and I venture to say a step which was the only step contemplated when this subject was first mooted. We are willing to go with you in applying this limitation of liability to all kinds of damages that a ship may do, whether to herself, to other ships and

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cargoes ; and possibly, if we take that step, a time may come when we shall see our way to take another step. I do put it to the conference whether it is wise to take this step which we can all agree upon, and do something, rather than, by attempting to do more, to do nothing in effect. With these words I beg to move this resolution.

(*Traduction orale par* M. Louis Franck).

M. Mc Arthur a proposé à la Conférence l'amendement suivant : Le paragraphe I de l'article I serait modifié en ce sens qu'il y serait dit ce qui suit : (je vais lire la traduction française que je viens de faire hâtivement, mais qui est évidemment sujette à révision) :

» **Au cas où un dommage ou une perte 1° est occasionné aux**
» **biens, marchandises, ou autres objets quels qu'ils soient, se**
» **trouvant à bord du navire, ou**

2° est occasionné par faute de navigation du navire à un autre
» **navire, aux biens, marchandises ou autres objets quels qu'ils**
» **soient, se trouvant à bord de cet autre navire ; de même que**

» **3° aux digues, quais ou autres objets fixes, y compris les frais**
» **de relèvement,**
» **le propriétaire de navire ne sera responsable, pour chaque**
» **voyage . . . .** » (et le reste de l'article serait maintenu).

M. Louis Franck, (Anvers) : Si je puis ajouter quelques mots en mon nom, je ferai remarquer que sous cette forme, nous faisons sans doute une concession importante à nos amis anglais, mais nous arrivons à une solution pratique désirable. Dans les cas prévus par cette formule, sont certes inclus ceux que nous comprenons par actes du capitaine.

Nous insérerions éventuellement une réserve pour nos lois nationales.

Mr. English Harrisson, K. C. (London) : I beg to second the resolution which Mr. Mc Arthur has moved, and I do it upon this ground. This is a matter, of course, which is to some extent a compromise ; conciliation has

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been one of the leading notes of these conferences. We cannot all of us get our own way, and we cannot get it at the time we want it. Mr. Mc Arthur, who is a distinguished representative in our House of Commons, has pointed out the very great difficulty of embodying in the English law so fundamental a change as that indicated in the law before you. We have endeavoured to bring together to a certain extent what we consider the fluctuating opinions of our own section, and they have come to this compromise founded upon this idea that they carry out the wishes which are to some extent set forth in the document under discussion, and can concede to a certain extent the principle which is there indicated, although they cannot carry it, perhaps, to its purely logical conclusion. Mr. Mc Arthur said let us take one step if we cannot take three or four steps. That is the principle in England which is very often adopted. We cannot carry original recommendations, and are obliged to modify them in accordance with public opinion, and we cannot get public opinion to support us to the extreme length we desire to go. Under these circumstances our section has come to the conclusion that we cannot go further than embodying the proposals in the resolution which Mr. Mc Arthur has proposed. It is for these reasons that I recommend this resolution to your careful consideration.

Mr. AUSTIN TAYLOR, M. P. (Liverpool) : I do not wish to make any observation on the merits of the amendment, with which I am in hearty sympathy, but I do desire to raise a point of procedure — whether the resolution which I moved yesterday has died a natural death under certain operations, or whether when the draft-treaty finally emerges in an amended form it may be desirable to put that resolution substituting « as amended. »

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The PRESIDENT : As a matter of order no one knows better than yourself. I believe in the first place you have first of all to get rid of the amendments before you put a substantive resolution. What I propose to do with the assent of the conference is this — to finish this and any other detail there is, and then if you will please propose, and your seconder will second the resolution approving this, then later on I hope it will not have died a natural death, but will give new vitality to the treaty to which it relates.

(*Traduction orale par* M. LOUIS FRANCK).

M. English Harrison a soutenu la manière de voir de M. Mc Arthur. M Austin Taylor a demandé qu'après que le projet eut été ainsi amendé, un vote serait recueilli sur l'ensemble de la décision.

M. le Président dit qu'il espère que nous arriverons à une décision unanime sur ce point.

Quant aux autres questions de détail, il y aurait toujours encore moyen de faire des remarques, notamment sur l'application du principe que nous arrêterons et la rédaction.

Il est aussi entendu que le vote impliquera le rejet de l'article 6, sauf pour les derniers mots, c'est-à-dire ceux relatifs aux gages du capitaine et de l'équipage, et la partie relative aux digues et objets fixes, et que la première phrase disparaîtrait, cette disposition allant considérablement au delà de ce qui est admis par différentes législations nationales.

M. LOUIS FRANCK : On behalf of the various Continental nations here, I may say we have found our way to agree with what has fallen from Mr. M'Arthur. We are willing to accept that the ground of this new system of limitation of liability should be exactly the same, as far as the International Treaty is concerned, as the present British law, so that contracts would only be included in it so far as contracts are included actually in your practice and in your statute. I hope this will meet with your approval.

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The PRESIDENT : I will put the matter formally to the meeting. I understand that the nations here represented are prepared to accept the first Article as amended by the resolution, proposed and seconded, as you have heard—of course, as a sequence upon that to agree that Article 6 in future shall read simply : « The limitation of liability determined according to the preceding articles is not admitted for the wages of master and crew, » the other words disappearing from Article 6. I understand some question has been suggested by M. Berlingieri with regard to other matters that are not expressly provided for. Speaking only for myself—but I think I should represent the sense of all who are present in dealing with this matter —nothing that is not covered by this can be covered by this. This is proposed as an international agreement and it does not profess to interfere with the internal municipal laws of any country, excepting so far as they are expressly modified by agreement in the new treaty to which that country consents.

(*Traduction orale par* Mr. FRANCK).

Monsieur le Président vient de répéter qu'il conclut de la discussion que l'on est d'accord pour accepter les modifications telles qu'elles sont proposées par M. Mc Arthur et ses amis anglais.

Il dit également que ce vote impliquera la modification de l'article 6 qui se réduit à ceci : « LA LIMITATION DE RESPONSABILITÉ DONT MENTION » AUX PRÉCÉDENTS ARTICLES NE S'APPLIQUERA PAS AUX GAGES DU CAPITAINE » ET DE L'ÉQUIPAGE. »

Ensuite, il a répondu à M. Berlingieri que comme ceci est un traité international, tout ce qui n'est pas expressément dit dans le traité n'y est pas compris, mais est réservé aux législations nationales.

M. FRANCK : M. Benyovits calls my attention to an amendment which he moved, where he proposed to say that where the owner is himself conducting the ship this

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limitation of liability would apply. I may just mention to him that the words as in the English terms are covering that case.

The PRESIDENT : I am afraid it is my fault, which I hope the conference will forgive, but the fact was there are the words which of course will still remain in Article 6, because that has never been hitherto in question, « the limitation of liability determined according to the preceding article applies . . . . the case of personal fault of the owner alone excepted. » Those words must remain in. They are a fundamental portion of our law.

Mr. CARVER : May I suggest that you should adopt in the amendment that is proposed, the words « WITHOUT HIS OWN FAULT. »

The PRESIDENT : I think that must be put in.

Mr. CARVER : May I point out it is a little wider than Article 6.

The PRESIDENT : I think it would be hardly reasonable to go beyond the text as adopted.

M. FRANCK : The case to which M. Benyovits alluded is the following one :—He is entirely in agreement that the personal fault of the owner should exclude all limitation of liability, but he alludes to the case which perhaps may not come on often in England, but which often comes on in some of the Southern States, of a captain conducting his own ship, some of the small seagoing crafts which they have there, and having a collision caused by his negligence or some other men there. And he thinks, and I think, there is much in it that there should be an exception provided for that as far as improper navigation be concerned. However, it is not a very important matter.

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The PRESIDENT : I think it will be better, in view of what M. Benyovits suggests, that we should deal first with Article 1, and deal with Article 6 as a separate resolution. Therefore Article 1 will stand. Are you gentlemen all agreed, or must we take the vote of nations upon that which has been, as regards Article 1 and the first section of it, moved by Mr. M'Arthur and seconded ?

Mr. CARVER : Do you mean the first paragraph of Article 1 ?

The PRESIDENT : Yes, merely the first of Article I.

Mr. CARVER : You are not taking the whole of Article I.

The PRESIDENT : I said the first paragraph of Article I. That is the portion affected by the amendment of Mr. M'Arthur. Are you agreed as to that ? If you are. . . . . Well, if not, I take the vote.

M. LOUIS FRANCK (Anvers). Nous sommes tout d'accord, je pense, et il ne faut pas de vote. (*Oui! Oui!*)

Carried unanimously. — Adopté à l'unanimité.

The PRESIDENT : Now we can proceed with the rest of this Article. As I understand it, there were two questions of substance which were raised. One was the question which Mr. Mc Arthur and Mr. Elmslie enlightened us upon — namely, that some question might arise as to (C), that is really, as I understand it now, as to the phraseology of (C) being technically correct, and really expressing to men of business what ought to be done. There was also the question M. Le Jeune raised, as to the meaning of the words « net freight » later in the same article. I should suggest to this conference whether it might not be

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expedient, with regard to both of those, as they are questions really of improving the language, as to which I have already said something as to the great difficulty at any rate of dealing with it here, whether both of those questions might not be usefully referred to the committee, who will deal with the drafting of the whole when we have given the principles our general approval — (*hear*, *hear*). I confess I think somewhat strongly that is the right course to take. I do not know whether any member would move that. I feel diffidence, in the chair, in moving anything or interfering in the slightest degree with the conference. Therefore I merely respectfully suggest this, that when we have dealt with the Article 6, which we ought to deal with, because that raises this question of personal fault or privity of the owner, we may leave the remainder of Article 1 under some such resolution as this to the committee to be appointed by the Permanent Bureau : « THAT THIS CONFERENCE, APPROVING THE TERMS OF THE DRAFT-TREATY ON SHIPOWNERS' LIABILITY AS AMENDED, REQUEST THE PERMANENT BUREAU TO APPOINT A SUB-COMMITTEE, AND LEAVES THE DETAILS OF THE DRAFT-TREATY, INCLUDING THE MORE PRECISE DEFINITION OF THE TERMS FREIGHT AND NET FREIGHT, IN ORDER SATISFACTORILY TO PROVIDE FOR THE PROPER APPLICATION OF THE PRINCIPLES NOW APPROVED BY THIS CONFERENCE. » I think it will save a good deal of time and a good deal of what I am afraid might be not wholly fruitful discussion as to the rest of the article, and that will apply to what Mr. Mc Arthur and Mr. Emslie have said with regard to indemnities. There is one matter which it is felt by very valued members of this conference is a question of principle which I don't think there will be any difficulty upon. M. Franck has been good enough to consider it. That is this — that we might settle here the

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question that arises under the head of Section C, leaving (C) as it stands : « To the indemnities due to the owner for general average, collision or other damage suffered by the ship during the voyage, subject to deduction of the expenses incurred in putting the ship in a fit state to complete the voyage. » There will be a proposition, and I shall not anticipate, which is in the nature, as I understand it, practically of an agreement, that there shall be added to (C) certain words.

Mr. ACLAND, K.C. (London) : Mr. Emslie raised a question yesterday as regards the position of the person whose ship or cargo has been damaged in the course of a voyage, which was still uncompleted, and he pointed out that it seemed undesirable that the person who was damaged in one of the earlier stages of the voyage should have imposed upon him the whole of the sea risks until that voyage was completed, which, as he pointed out, would be the result of adopting the draft-treaty as it at present stands. After the meeting yesterday a discussion took place between various members of the conference representing the different nations represented, and it was suggested that words should be added to the treaty which should enable the person who had been damaged either to arrest the ship immediately after the damage had been occasioned, or if he choose to run the risk of sea damage until the end of the voyage, that he might do so, but he would then only have as his security the value of the ship as she was at the end of the voyage, as provided in Clauses A, B, and C of Article 1. In order, therefore, to provide that option to the person who had been injured, it was suggested that I should move the following addition to the article, to add after C the following words : — « PROVIDED THAT WHERE THE VESSEL HAS BEEN ARRESTED AFTER THE OCCUR-

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RENCE OF SUCH LOSS OR DAMAGE AS ABOVE-MENTIONED AND BEFORE THE END OF THE VOYAGE, THE VALUE OF SUCH VESSEL SHALL BE TAKEN TO BE THE VALUE AT THE DATE OF THE ARREST. » It therefore would remain to the person who had been injured by, say, a collision in the Thames by a vessel which was proceeding, say to Australia, to make up his mind whether before the vessel left the territorial waters of Great Britain he would have her arrested, or whether he would take the risk of the vessel getting to Australia, and then taking her value there. That is to say, that supposing there was a total loss — he in any case runs the risk of the total loss — but if there is anything short of a total loss it will be in his power to arrest the vessel at once, or if he chooses to take the risk to have the vessel, as her value then is, when she arrives in Australia. I hope, gentlemen, I have made myself clear on the point it is desired to meet. This, like most of these amending resolutions, is the result of a compromise, and it is a compromise which I hope will prove acceptable to all the interests which are here represented.

Mr. EMSLIE (Londen) : It will not be necessary for me to take up your time. I desire formally to second the proposition made by Mr. Acland, which would remove what I conceived yesterday to be a very serious blot on the proposal, but my friend Mr. Mc Arthur and I understand that the motion which will be made wili cover and reserve that further point to us — he has my accord. We want some words introduced to make these indemnities as occurring subsequent to the act with reference to which the claim arises, and if, sir, that reservation will be permissible, that the matter comes before the committee, I need not take up the time of this conference.

The PRESIDENT : Yes.

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Mr. EMSLIE : Very well then. I spoke sufficiently long on this point yesterday.

The PRESIDENT : What point is it you wish to have understood as being reserved ?

Mr. EMSLIE : I want this definite resolution as moved by Mr. Acland, and the next point is in C., where it says that « Indemnities due to the owner for general average, collision or other damage suffered by the ship during the voyage. » As it at present stands, that might include a general average contribution by the cargo when the collision happened subsequent to that. That is not the idea of my Continental friends, and therefore it must be subsequent to.

The PRESIDENT : That certainly must be considered, and M. Franck will, I am sure, bear that in mind. It is a question of principle, but it is so far a matter of detail that it ought to come before the committee, and, of course, if there is any difference, the treaty must come before the conference again.

Mr. CARVER : This is refered to the committee to deal with the draft, and then it is to be considered again. It has been urged on me, and it seems to me with great force, that it is highly desirable that the draft when it has been dealt with should come back, and there should be an opportunity for the National Associations to consider it before it comes back.

The PRESIDENT : The draft-treaty as revised to come up for further consideration at a subsequent conference ?

Mr. CARVER : And to be circulated through our national associations.

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M. Franck : It has always been done so; it is not necessary to add those words.

M. Ch. Le Jeune (Anvers). MM. J'appuie les remarques qui viennent d'être faites par M. Carver. Elles me paraissent d'autant plus essentielles que nous n'avons pas seulement devant nous des questions de rédaction, mais des questions de principe, et l'une d'elles est celle qui a été soulevée par M. Acland. Il y a là un principe tout nouveau. Le principe admis par nous, c'était la responsabilité par voyage, responsabilité unique, où l'armateur n'était exposé qu'à perdre une fois l'entière valeur de son patrimoine.

Avec la réserve qui vient d'être proposée, il est incontestable que cette disposition subit une modification. En supposant qu'une collision ultérieure vienne à se produire entre le moment où l'arrêt a eu lieu dans un port intermédiaire et la fin du voyage, il se trouverait donc qu'il y aurait eu une première fois une responsabilité acquise et dont le propriétaire aurait à encourir toute l'étendue et une seconde responsabilité qui naîtrait depuis le port de relâche. Dans ces conditions il est bien certain qu'il y a une question de principe engagée.

Je ne me propose pas de la discuter parce que la Commission aura l'occasion de l'examiner, mais je pense qu'il est nécessaire de la signaler parce qu'elle vient atteindre d'une manière assez sérieuse les principes inscrits dans notre avant-projet de traité.

Sous le bénéfice de cette remarque, je propose de laisser cette question à la Commission.

J'en dirai autant de la question du fret notamment pour la proposition tendant à dire « la moitié du fret brut, » au lieu de : « le frêt brut sous déduction des charges qui lui sont propres ». Mais peut-être la Commission sera-t-elle

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amenée à nous faire d'autres propositions. Je pense que M. Verneaux avait l'intention d'en faire une à ce sujet.

Il faut donc, pour ces raisons, se mettre bien d'accord sur ceci : que les principes sont réservés, tout en observant les votes passés et les opinions exprimées sur ces questions.

(*Verbal translation by* Mr. Louis Franck)

M. Le Jeune said, whatever might be the reasons for adopting the views of Mr. Aclaud and Mr. Emslie, they were to a certain extent different from the general principle of the draft-treaty as it stood, and therefore entirely new. The principle of the draft-treaty was one voyage, one risk, as far as the value of the ship and freight was concerned. Into that principle a modification, an exception, was introduced. Without expressing any view as to the merit of that, he considered that as a draft-treaty all matters of principle would have to come on for third reading. It would be just as well to refer those matters, as has always been done, to the sub-committee, who, taking the views as expressed at the conference, would then report, and the third meeting would have to decide the question. The present conference would put into form the general principle, as it ought to be in the treaty, and that could be approved. Then questions such as the matter of freight, and some others which were matters of detail in the consideration of the general treaty, would be referred to a sub-committee and then go on to the next meeting for decision.

M. Franck : I may add, I personally, and some of my friends, are entirely in agreement with what has fallen from Mr. Acland. I consider, if it is a principle that the rule should be a voyage, and only one risk for each voyage, you should not interfere with the right of the diligent party who steps in and gets hold of the ship. I may say that, as I hear from Dr. Sieveking, is also the practice in Germany. Although in Germany they have that principle, there is one risk for one voyage, nevertheless, they say if there is a collision in Hamburg Harbour with a ship going to

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Australia, if the man suffering by the collision, say for instance it is a Hamburg-American liner, he will not run the risk of arresting her, and he leaves her to go to Australia. He may insure the vessel for that risk; that is his risk. If he wishes to step in and arrest the vessel then he must be entiteld to obtain bail at that moment, and then as far as the collision is concerned the voyage is to be considered at an end. This will show to our English friends that if we are suggesting to put the matter before the subcommittee it is by no means with the idea of escaping a resolution. I am fairly sure, for my part, that there are far more chances of it getting through, but I think we must go carefully and diplomatically. I think we must refer this to the sub-committee; if you think this is a matter of principle there is also the freight.

Mr. ACLAND: The question is a question of principle. It is an intrusion of a new principle into the principle already introduced into the treaty. I myself, and I think I may say for my seconder, cordially accept that proposition.

THE PRESIDENT: I am much obliged to you. I think the proposition is admirable. Owing to my want of knowledge, no doubt, I am afraid I did not anticipate these questions of principle cropping up to the extent they have done. Would it not meet with the view of everyone while we accept Article I, otherwise we refer to the sub-committee in the usual way so that the other matter will come up afterwards for consideration, the questions both of detail and principle involved in « C. » That covers both freight and Mr. Emslie's question.

Mr. ACLAND: Section C and the proposed addition to Section « C ».

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The PRESIDENT : Section « C » and the addition covered by your amendment ?

Mr. ACLAND : Yes, that will do.

The PRESIDENT : I might say to M. Le Jeune, merely to help on the conference, that they would be willing to let this amendment and your question as to freight and any other question that might arise on Section « C » be referred to the sub-committee.

M. LE JEUNE : I perfectly agree.

The PRESIDENT : The only remaining question, namely, Article 6 —

Mr. CARVER : May I draw attention to a matter in Article I. It is only the drafting, but it certainly puzzled me. It is the last paragraph but one. In the English translation it reads thus : — « In case of successive obligations after final discharge of the whole of the goods and passengers happening to be on board at the moment both of the one and of the other event. » I take it that must mean at the date of the earlier obligation.

The PRESIDENT : I think that will be taken as one of the points which you now indicate.

Mr. CARVER : Yes, I now suggest it for their consideration.

The PRESIDENT : The general resolution which will refer the drafting generally and also the special points of Mr. Acland's resolution and the other point will all go up together. Now Article 6 will stand. I daresay Mr. Scott will move it. Of course we have struck out what follows from our alteration of Article I, and it will stand thus : — « Limi-

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tation of liability determined according to the preceding articles is not applicable to the case of personal fault of the owner. It is not admitted for the wages of master and crew. »

Mr. FRANCK : I will second it.

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La proposition faite est celle-ci : L'article 6 serait modifié dans les termes suivants :

« LA LIMITATION DE LA RESPONSABILITÉ DONT MENTION » AUX ARTICLES QUI PRÉCÈDENT NE S'APPLIQUE PAS AUX » CAS DE FAUTE PERSONNELLE DU CAPITAINE.

» ELLE N'EST PAS ADMISE POUR LES GAGES DU CAPI- » TAINE ET DE L'ÉQUIPAGE. »

The PRESIDENT : Does any gentleman wish to address the conference on that motion ?

M. LOUIS BENYOVITS (Fiume). Messieurs, Pour des motifs que je vous ai expliqués hier, je vous demandais que la limitation de la responsabilité fût étendue également au cas où le propriétaire lui-même conduirait son navire et j'ai ajouté que cette limitation ne s'appliquerait que pour ce qui concerne la conduite technique du navire. Il ne s'agit donc pas de faits juridiques, et j'ai dit encore qu'il fallait naturellement exclure le dol.

Je me permets d'insister sur cette question, c'est-à-dire que ma proposition serait :

« QUE LA LIMITATION DE LA RESPONSABILITÉ SOIT » ÉTENDUE MÊME AU CAS OÙ LE PROPRIÉTAIRE CONDUIT » LUI-MÊME SON NAVIRE, POUR LES FAITS CONCERNANT » LA CONDUITE NAVALE, MAIS A L'EXCLUSION DES CAS » DE DOL. »

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(*Verbal translation by* Mr. Gow).

M. Benyovits said in his view there was one exceptional case to which he attached great importance that ought not to be omitted. That was the case of the shipowner who himself was in command of his ship. He wished exception to be made on behalf of such an owner where he personally committed technical faults. and himself was guilty of improper navigation, so that is position as owner should not interfere with his position as master. He should have the advantage of being treated as master. He wished, of course, in all cases to exclude fraud which would be objectionable on all grounds.

M. Louis Franck (Anvers). Messieurs, Il me paraît que malgré les sentiments d'humanité qui peuvent militer en faveur de la proposition de M. Benyovits, nous ne pouvons pas adopter sa manière de voir.

Le cas qu'il signale ne peut du reste se présenter que dans quelques pays seulement et ce serait d'ailleurs absolument en opposition avec nos amis anglais ; l'adopter serait compromettre le sort du traité et les raisons indiquées par notre honoré collègue en faveur de sa proposition ne sont pas assez puissantes pour que nous voulions courir ce risque.

Je me permets d'ailleurs de faire remarquer à titre pratique, et sans en aucune manière approuver ce genre de procédés, que dans les pays où ceux qui conduisent ainsi ces petits navires et ne peuvent invoquer la règle d'abandon, sont exposés à responsabilité personnelle, ils trouvent très aisément moyen de limiter leurs risques à leur navire. Il y a dans la pratique à cet effet un ensemble de moyens dont ils usent très largement.

Je crois donc que les raisons invoquées par M. Benyovits ne sont pas assez puissantes, surtout qu'il faut donner satisfaction sur ce point à nos amis anglais.

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I was just saying to my Continental friends that I have a feeling that our English colleagues could not accept the proposition of M. Benyovits; that they could not admit that a person being himself guilty of negligence could in any way as to these matters limit his liability, and, therefore, I would approve of the amendment as moved, and not accept the proposal of M. Benyovits. As a matter of practice, so far as I know these things, the captain, who is the owner of the ship, in most countries, even if not entitled to limited liability, has found practical ways of having only his ship at risk.

M. Louis Benyovits (Fiume) : Cela est déjà accepté par la loi française dans les articles 82 et 85 où il est dit : qu'en cas de naufrage de navire dans un port de mer, ou hâvre, dans un port maritime ou dans les eaux qui leur servent d'accès, comme aussi en cas d'avarie causée par le navire aux ouvrages d'art, le propriétaire peut se libérer, même envers l'État, de toute responsabilité, par l'abandon du navire, sauf en cas de faute.

Mr. Emslie : The captain may be part owner and the captain may be found in part fault. Could not the whole matter go to the committee ?

The President : It was an early point in the proceedings that if there is to be a penalty, particularly with alterations in our own law, it is desirable that the matter should be further considered. It is desirable there should be finalty in these matters. It is for the conference to decide.

Mr. Emslie : I am quite satisfied then to leave it.

The President : Does M. Benyovits move any amendment, because if so we would like to have it in writing. Then perhaps it will meet M. Benyovits' case if, without his moving any formal amendment, the motion be put of

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Mr. Leslie Scott, seconded by M. Franck, which is : « That Article 6 as to the limitation of liability, determined according to the preceding articles, is not applicable to the case of personal fault of the owner. It is not admitted for the wages of the master and the crew ». Does M. Benyovits wish that to go to the vote or not ? I will take it by nations, of course, if required. Does any other gentleman wish to address the meeting before I put this to the vote ? Very well ! I will ask you kindly to give me your votes.

A DELEGATE : How are we voting ?

M. FRANCK : Those who are in favour of the motion as put by Mr. Leslie Scott, which I have had the honour to second, have to vote « Yes » ; those who are in favour of the ideas of M. Benyovits would have to vote « No ». I am going to call one by one the names of the various delegates present, but if I should miss one or another they will kindly answer, and then we will make the records up.

(*M. Franck was proceeding to call over the names of the British delegates, who largely expressed themselves in favour of the proposition, whereupon M. Benyovits intimated his desire to abandon his proposal.*)

The PRESIDENT : Then I may take it generally that this is accepted ?

RÉSOLUTION

ART. 6 AMENDED.	ART. 6 AMENDÉ.
That the limitation of liability determined according to the proceding articles is not applicable to the case of personal fault of the owner.	**Que la limitation de responsabilité dont mention aux articles qui précèdent ne s'applique pas au cas de faute personnelle du propriétaire.**

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It is not admitted for the wages of the master and the crew.

Elle n'est pas admise pour les gages du capitaine et de l'équipage.

Agreed. — Approuvé.

The PRESIDENT : Then, gentlemen, there are only two resolutions, which practically follow, but which must be duly passed. The first is the one wich I have indicated, and I daresay it will be moved here — I daresay M. Le Jeune would move it. It is partly in accordance with his views. It is : —

« That his conference, approving the [terms of the draft-treaty on the limitation of ship-owners, liability as altered by the resolution passed at the present meeting, requests the permanent Bureau to appoint a sub-committee — *a*) To revise the details of the draft-treaty in order satisfactorily the provide for the proper application of the principles approved by the conference. *b*) To consider the questions of principle as well as the detail involved in C, and in the proposed additional sub-clause D as drawn by Mr. Acland's amendment, and also the more precise definition of the terms « freight » and « net freight »; and, further, to report as soon as possible to the Permanent Bureau ».

« Que cette conférence, approuvant les termes de l'avant-projet sur la limitation de la responsabilité du propriétaire de navire tel qu'il a été modifié par la résolution votée par cette réunion invite le Bureau Permanent à désigner les membres d'une commission, *a*) Pour réviser les détails de l'avant-projet, afin de les mettre d'accord avec les décisions de la conférence. *b*) Pour examiner les questions de principe de même que les points de détail relatifs à C, au paragraphe additionnel D, proposé par l'amendement de M. Acland, ainsi que la définition plus exacte des mots « fret » et « fret net »; et pour ensuite, faire rapport sur ce qui précède, aussitôt que possible, au Bureau Permanent ».

That, I think, covers all the cases.

Dr. BRANDIS (Court of Appel, Hamburg) : Gentlemen,

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I formally move the resolution which the president has just read out to you.

M. Le Jeune : I have great pleasure, gentlemen, in seconding the resolution.

The President : Then I may take it that the meeting approves of this.

Chorus : *Agreed. — Approbation unanime.*

The President : Now, the only remaining business is that which Mr. Taylor is anxious should be put before we leave this subject altogether. His motion necessitates, in order to cohere with what we have done, some alteration, although is only formal. As it stood, his resolution, which was duly proposed and seconded, was, « That the draft as an international treaty, placing the merchants and shipowners of all contries in the same position in regard to the extent of the shipowners' liability be approved. » That, of course, has now been taken subject to the last resolution, and which has referred certain portions of it to further consideration, and therefore I think it would be illogical, and Mr. Leslie Scott tells me, I think, that this has been approved by Mr. Taylor.

Mr. Leslie Scott : Yes, that is so.

The President : That is, it should be taken « That the draft as now amended, but subject to revision as in the former resolution, be approved as an international agreement. » If Mr. Harrison is here he would perhaps let me see him for a moment or two, and perhaps we can settle this.

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Mr. HARRISON having consulted with the President for a few minutes, the President said : « Gentlemen, I think I may treat that as carried by agreement. »

Chorus : Yes.

(*Traduction de la résolution proposée*).

« QUE L'AVANT-PROJET, AINSI QU'IL EST PRÉSENTEMENT AMENDÉ, MAIS » SOUS RÉSERVE DE RÉVISION SELON LA RÉSOLUTION PRISE, EST APPROUVÉ » COMME BASE D'UN ACCORD INTERNATIONAL. »

Carried unanimously. — Adopté à l'unanimité.

The sitting adjourned. — La séance est suspendue.

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FRIDAY, JUNE 16th 1905

VENDREDI, 16 JUIN 1905

Afternoon' sitting. — Séance de l'après-midi.

Maritime mortgages & Liens on ships

Hypothèques et Privilèges maritimes

General discussion.

The PRESIDENT : Gentlemen, well now, the next portion of the business of the conference is to consider the draft-treaty on Mortgages and Liens on Ships, and I think the best course probably for the discussion to take would be to discuss first the general proposition or scheme of the project, and then if we have time to discuss, with a view to voting on it, article by article, and then, of course, although it may not be here, the vote upon the whole project can be taken. I think I understand that our friend Mr. Carver, who has given at page 102 of the published report of the Amsterdam Conference an admirable and concise view of the English law, will possibly be able to help the conference very considerably, stating his views with regard to this draft-treaty on this important subject.

Mr. T. G. CARVER (London) : This is, of course, a very troublesome subject, and we have a very great variety in the different codes as to its treatment. There is one feature which is an odd feature of difference between foreign codes and ours, and our rule. Broadly speaking,

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the foreign codes put the claim for collision damage at the bottom of the claims upon the ship. Broadly speaking, you may say that ours puts it at the top. So there you have, just as an illustration, an instance of the important difference there is between the two systems, or rather the very many various systems; and therefore you have a good illustration of how desirable it is that we should, if possible, formulate a system which may be taken as common for all. Now, as I say in the codes, you find these different claims against the ship put in various orders, and where people have got codes they put them down in hard and fast categories, so that there is a good deal more clearness, perhaps, in the codes than you will find if you had to work the thing out in English law. At the same time, myself, I do not detect in the codes any very clear coherent principle. I think that in our system, although as I say, it is more ragged — less definitely expressed — I think you will find that there is a principle, and my suggestion is to the foreign that we should try to find out a principle and work accordingly. To some extent the British view has been adopted in the draft code which is before us, but I think very imperfectly adopted, if I may say so. But I think it gives us a good working basis, and with a few changes I believe we can turn it into a draft which we can accept. I will indicate, I think very shortly what those changes to my mind ought to be, but may I first try to define what appears to be a sound principle to work upon. A ship — and, of course, still more important if we adopt the rule that has been expressed in the last discussion where creditors are limited to the ship — a ship is a piece of property which is exposed to an adventure and the risks of an adventure. If you take a charge upon the ship as by way of mortgage, you are taking a charge upon something which it is known is going to be at risk. You, therefore, cannot complain if, during the course of

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the adventure and by the risks which are run, other charges unexpectedly become attached to that piece of property and acquire claims on the property which are superior to your mortgage. Now, so far as that goes I think everybody will be in accord, and terefore, the first principle we have is that charges secured upon the ship by agreements as by mortgage — I use that general expression mortgage charges upon the ship — by agreement acquired from the owner they of course take what the owner can give, and they are subject to these maritime liens—charges, privileged claims, call it what you will — which arise during the course of the ship's adventure. So far then that is easy, but then with regard to these charges which I say arise upon the ship during the course of the adventure, what are they? Some of them are in the nature of claims which arise as remuneration to people who have helped the ship on upon the adventure — salvors, for example; bottomry lenders, for example. Then again another class of charges upon the ship, which arise owing to the risks of the adventure, are due to the fact that the ship is adventuring, and in doing so is putting other property at risk; and therefore you have charges which attach to the ship because of collisions. Now, broadly, I think one may take those two groups. Then perhaps a third — I did mention bottomry loans. You have got those matters which become charges upon the ship by reason of being claims which have preserved — conserved — the ship. You have charges upon the ship because the ship as an adventuring thing has done damage to others. Well now, on what principle — let me say at once according to English law these various matters, salvors' claims, collision claims, claims on bottomry bonds — they form what we call maritime liens — that is to say, a charge which fastens on the ship there and then for the moment, wherever the ship

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gets to afterwards, whether it is sold, or whatever is done to it, that is a thing attaching to the ship. You have to go into a Court in order to make the thing effectual ; it is an Admiralty Court which will give effect to a charge, but there it is ; it is a charge upon the ship. Now, the term maritime lien as I understand it is not used in other countries, but they use similar words ; they call them privileged claims ; and, so far as I know, a privileged claim is extremely like a maritime lien. Well now, on what principle are those various maritime charges upon the ship ; on what principle should they rank ? The principle broadly in our law is that they should rank in inverse order of dates. Mortgages made you say on land ; well — of course, they attach in the direct order of their dates. If I take a first charge, a charge upon a ship for a loan of money, and then somebody else takes another charge upon it ; well, I have got the first charge and therefore I have got the first claim ; that is the rule with regard to mortgages, and there is no difficulty about seeing the justice of it ; but when you come to these charges, which, as I say, are the result of the adventure — these incidents arising because of the adventure and because the ship is adventuring — then the broad rule is that those attach in the inverse order of their dates, and the good sense of that, I think, is very obvious too. Take salvage claims, claims for remuneration, for assistance given, whether it be assistance in the way of salvage or whether it be assistance in the way of providing money to enable the ship to go on, you see the last one has conserved the ship—has enabled the ship to get to that place at which all these charges become realisable facts. Therefore the last charge — to send a ship on, to keep her afloat, to get to her destination where she may be sold if necessary, and where the other charges may be fruitful — that last charge ought to be

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made before those that are attached. That is a very clear principle, but the same is true with regard to that other group for damage done by the ship, and I would put it this way: Suppose A gets a charge upon the ship on January 1, whether it be for a bottomry loan or for having salved the ship — suppose he gets that charge from that moment forward his remuneration, his recovery of his charge depends upon what happens to the ship afterwards. He therefore, becomes a co-adventurer with the ship; he has got something aboard of her; he has set her in motion again. Suppose then on January 2, she collides with another ship and it is damaged; it is his ship which has done the damage in a sense; he is one of those who is keeping her afloat and enabling her to do that damage on January 2, and, therefore, the same principle applies rather differently, that the last claim, the claim which arises on January 2, should come before the claim which attached on January 1. Now, that is the broad principle in English law, and I submit it to you as being sound sense and as affording us a mode for working upon; but there is no blinking at the fact that if you look through all our cases you find apparent exceptions to this. They have arisen in one way or another. The judgments in the Admiralty Court have not always been very consistent or consecutive. You find differently apparent exceptions; but I do not think there is any substantial exception to that, except sometimes in the case of the mariners' wages. Mariners' wages is another group which, although contractual, are always a group which gives a charge to the mariners upon the ship and has always been looked upon with a good deal of favour, not only with us, but in all other countries. I think, and of course, one can easily see that sympathy would lead to that, and therefore I cannot help thinking that this draft has done wisely in giving a preference to the wages of the master and crew,

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a preference above these other liens which we might very well adopt ; very well adopt leaving it out of the great group of maritime liens, putting it into a category by itself, and letting it come ahead of that. Now those are broadly the rules on which I should suggest to the conference that it might act. Now, how are they carried out in the draft which is before you ? Leaving out some verbal charges which are perhaps somewhat the result of the translation, I would pass by Article 1 and Article 2. I think some of the words might be changed with advantage ; but pass by those and come to Article 3, which says, « A privileged right on ships is given to...»—I should suggest it ought to be the following claims and only to them, but they are as follows : — First of all, claims for judicial costs, taxes and public dues, custody and conservatory costs. Well, the ship is in port ; you have to take steps to realise her — to get her sold; certain port dues have to be paid, watchmen have to be paid to look after her, and those charges, which are charges incident necessarily to the realisation of the security — well, they necessarily must come first, and therefore they are put in a category first. Now, the next one, No. 2, is indemnities or sums — I suppose sums « due for salvage, pilotage and towage, and for general average during the last voyage. » I think myself that is a mistake. General average during the last voyage is merely a claim by the cargo upon the ship, a claim which only becomes a claim at all when the ship has arrived, and it is a claim which is a money claim. I am not aware that it should give rise to a maritime lien or charge at all upon the ship, but at any rate it is in the nature of a claim by the cargo of a different order ; that is to say, a claim by the cargo which is one of the adventurers in this matter and is not an outsider who has acquired some claim by reason of what the ship has done ; and I think that that is

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a mistake to have general average put in that position. Then No. 3, « Wages of the master and crew since the last mustering, but with a maximum of 12 months. » « Since the last mustering » is a new expression rather to me, but I daresay that could be explained. Now I would suggest that if we are — I do not quarrel with it — to have the wages of the master and crew in a separate category, that they should come immediately in No. 1. « Claims for judicial costs, » and so forth; and I say that not only because I think that would not be an unwise thing to do, but also because I think salvage, pilotage and towage ought to come down into the same category with claims for damages caused by collision and with loans on bottomry which appear in No. 5. Now, I do not know whether I have made myself clear. My suggestion, as you have heard, is that you should follow broadly the English principle, which says that the maritime liens are to attach in the inverse order of date, and therefore that they ought all to be in one category; that is to say, there should be one category which should be No. 3, including salvage, pilotage, towage, collision damages and bottomry loans. They are all of a character which I have tried to explain, either liens which have attached because of the assistance rendered, or which have attached because the ship has been kept going as a thing that can cause damage to other people, so that I would propose that the third category should include all these things — salvage and pilotage and towage — which generally goes with salvage — and also conservatory expenses — conserving expenses and collision and bottomry loans. Now I put those all, I say, in one category, otherwise we cannot get them on that footing, all coming together, but in inverse order of dates. This code as it stands does not recognise the principle of inverse order of dates.

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I will show you that directly. It appears in Article 5, the last words, and it would, I think, be accepted because — let me give you an illustration — supposing there have been two loans of bottomry, one at port A - the port of refuge A — the ship has gone and got in trouble again in port B, and had a fresh bottomry loan at B. Now I think it is obvious to everybody that the bottomry loan at B must come before the bottomry loan at A ; the loan at A would be lost were it not for the fresh assistance given by the lender at B, therefore we must have inverse order of dates somewhere. Now then, let me carry on the illustration. Suppose that leaving port B the ship comes into collision. Well, that collision claim ought the come before bottomry loan B. Suppose later on she is salved and brought into her port of destination, the claim of the salvor must come before the collision. Suppose, as may well happen — I could give you an illustration — suppose after the salvage another collision. There again the second collision ought to come before the salvage claim and before the previous collision and before the bottomry bond at B, and before the bottomry bond at A. Now you might argue that in this way you should have them all in one category — one of these categories — and then apply inverse order of dates ; so that in place of Nos. 2, 3, 4 and 5, I propose this, that No. 2 should be, « Wages of the master and crew since the last mustering with a maximum of 12 months, » and then that 3 should be, « Sums due for salvage, pilotage and towage, and claims for damage caused by collision, and loans on bottomry » ; then that No. 4 should be —

A Delegate : Would you state that again ?

Mr. Carver : It is an amalgamation of 2 and part of 5.

The President : In Article 3.

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Mr. CARVER : « Sums due for salvage, pilotage and towage, and claims for damage caused by collision, and loans on bottomry ». I have slightly altered the English in order to give effect to the grouping in 5. Let me say one word why I put the claims of the cargo into the fourth category. The claims of the cargo, you see are simply claims arising out of the contracts which the shipper has made with the shipowner. They made them knowing they were to be exposed to the venture. They therefore stand on a different footing, and are much more like a mortgage which comes after all these. They are not calculated like the claims of salvors or claims of collision or claims on people who in a port of refuge or distress have lent money, which money depends for its repayment on the ship's safe arrival. Therefore I have put these into the fourth category. That, then, is Article 3. Then I propose, instead of Article 5 as we have got it, here — that is the other important risk — if you will look at Article 5 and the second paragraph you will see it runs as follows : « for the same voyage » — I will say a word about the voyages directly — « the privileges will rank amongst them in the order of the enumeration in Article 3. Those claims which are classed under the same number in that article will have equal rights. » That is what I mean by saying this does not recognise the inverse order of the dates. I do not quite know why that should be done, because if one takes the most modern code on the Continent — the German code — the German code there plainly does recognise that principle. For instance, let me read Article 768, which ranks them in this manner. It first of all puts port and other dues, then crew's wages, then pilotage and salvage, &c., general average, bottomry, and other cases of necessity. They put those in the third category, and then to that category apply the order of inverse dates. What I complain

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of in the German code is that it does not bring collision claims on to the field until the very last. That is to say, it allows a claim for non-delivery of or damage to cargo before the claim of the ship that had been injured by the collision. That seems to be curiously unjust. It makes the ordinary creditors of the ship who have supplied stores at foreign ports — it makes them all come in front of the collision claim. Well, I confess I do not think that will commend itself to most people. It certainly does not commend itself to our ideas, and I should think we ought not to follow the German code in that respect, but I am referring to the German code as showing that they have done that, and what I am proposing to this conference to put in this category No. 3 applies to the inverse order of dates. Therefore I would not place them in Article 5. I would, perhaps, simply say this, privileged claims are to rank in the order of the enumeration in Article 3. Claims classed under the same number are to rank on an equal footing except that claims following within Clause 3, which is the one I have described, shall rank among those in the inverse order of the dates in which they arose. That explains the changes which I would suggest in this draft, but there is a point which I have had to pass by. You will see that in Article 5 the first sentence says : « In case the privelege is not restricted to claims arisen during the last voyage, the order of the liens will be inverse to that of the dates of the voyages. Now those were the claims arising within the last voyage, and I think were only general average. In case the privilege is not restricted to claims during the last voyage, the order of the liens will be inverse to that of the dates of the voyages. Now I confess I do not see any sufficient reason for that. You do not find that idea in our law at all, and my own experience shows that it gives rise to very serious practical difficulties. The Admiralty Court quite

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recently has been exercised by a number of claims arising out of the fact that proceedings were brought here in England to arrest a French ship — proceedings which turned out to be quite irregular. The great desire, however was to seize that ship before she sailed again, because they knew that by French law their maritime lien, their privileged claim, if not enforced before she set sail again, would be gone, because technically there would have been a fresh voyage, with the result that an immense amount of disorder and confusion has resulted and the Admiralty Court has been well occupied. There is no principle that I can see that is involved in that. Why does it matter that a ship may have got away with a fresh cargo? Why should it destroy the claim? Very often the voyage — and of course, you have got to define the voyage, and a voyage is not always an easy thing to define — but very likely the voyage may have come to an end at a foreign port, a port at which it would be very difficult to exercise their lien, or to get the port at which it would not be satisfactory to have the ship sold to have your charges realised. At any rate, I do not think that in our law we have found any difficulty arising from want of restricting claims to any particular voyage. In this particular case the difficulty is as to what is meant by the last voyage At any rate, perhaps others will know about that, but I suggest to the conference that it is not worth while to bring in that restriction and that distinction between one voyage and another. It gives rise to difficulties if you have it, and I am aware that it is liable to give rise to a difficulty if you leave it out. Therefore, sir, I may just briefly sum up what I suggest: that we should accept this draft subject to verbal alterations — to altering Articles 3 and 5 in the manner in which I have explained. There is one point which I think ought to be considered carefully. Article 6 limits the privi-

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lege of a claim to one year, which is perhaps a reasonable limitation. The second sentence says : — « The national law regulate the effect to the transfer of property in ships on privileged claims and mortgages. » I think that is ambiguous. I suppose it means national law of the ship regulates the effect of the transfer of the ship, which I suppose means the sale of the ship or the mortgage of the ship, upon the privileged claims — the maritime liens. Well, at present I think the rule is that that is arranged not by the law of the ship, but by the law of the form in which the ship may be arrested, and I think it is a question deserving consideration whether it is desirable to limit it in that manner and see that in all cases the national law of the ship — the law of the flag — should determine the damage. Let me illustrate it. Supposing a ship has been in collision : the injured ship has a claim upon her. Supposing the owner of the wrongdoing ship sells her, is the collision claim to remain attached to the ship notwithstanding the same ; or is it not ? Now with us there is no hesitation at all in giving an answer — the answer is « certainly ». A man who buys a ship that has got maritime liens passing on her buys it with those liens. Suppose, however, the law of the ship — I do not know what law to suggest, say the Argentine law — suppose the Argentine law does not recognise that lien, say on a European ship, and the matter is being adjudicated upon by the English court, ought the English court to apply the rule and say : « No it is subject to a maritime lien because she has done damage ? Ought the English court to say : We shall give our remedies to the collision claimants, or ought they to enter into an inquiry as to what the law of this Argentine ship was ? I am not saying this is the law of the Argentine, but I am merely assuming it. Ought they to say « No, we will give effect to the Argentine law, although the ship has been sold

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in England, and to an English buyer, maybe? Ought we to give effect to that law and say that the claims for the collision damage has been defeated?» I think there will be a great difficulty, I am not at all sure that it would not be better to leave that sentence out and let the Court determine for itself what this rule is. With these observations I suggest we might deal with this and accept this draft treaty.

(*Traduction orale par* M. Louis Franck).

Je résumerai, d'une façon bien imparfaite, je le crains, ce que M. Carver vient de nous dire.

Il a commencé par faire ressortir qu'il y a une divergence fort sensible entre les législations continentales et la législation anglaise en ces matières.

Ce qui lui paraît la dissemblance la plus essentielle, c'est qu'en Angleterre, on suit en cette matière un principe général qui dans ses applications variées est suffisamment clair, tandis qu'il n'a pas réussi, dit-il, à découvrir un système unique dans les législations continentales.

Il a ensuite examiné quel devrait être d'après lui ce principe, et voici l'idée fondamentale dont il part : Le navire, dit-il, est un objet de propriété d'une nature particulière. Il est soumis d'une manière constante et normale à un ensemble de risques. Il faut que le droit qui régit les questions de propriété, d'hypothèques et de privilèges, tienne compte de cette nature spéciale.

Tout d'abord, celui qui avance de l'argent sur hypothèque à un propriétaire de navire, sait que son gage sera exposé régulièrement et normalement à ces risques. Il ne doit donc pas s'étonner que certaines créances nées de cet ensemble de dangers, viennent primer son hypothèque.

Quelles sont maintenant les créances qui rentrent dans cette catégorie? Il arrive que le navire ait été sauvé, qu'il ait occasionné du dommage ; enfin, qu'il ait contracté un emprunt à la grosse au cours du voyage.

Voilà un premier groupe de créances qui assurément doivent avoir un recours sur le navire lui-même.

Maintenant, quels seront parmi ces créances, les rangs à adopter quand le produit ne suffit pas pour couvrir toutes les réclamations.

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D'après M. Carver, c'est de ranger ces créances dans l'ordre inverse des dates, et d'appliquer ce principe pour chacun des groupes qu'il vient d'examiner. Le dernier sauvetage primerait évidemment l'abordé puisqu'il a conservé le gage commun, mais si un abordage survient ensuite, le créancier pour abordage aurait la priorité sur le sauveteur antérieur.

Dans cet ordre d'idées, voici le système que M. Carver propose.

En premier lieu, il admettrait les frais de justice, droits du Trésor public et frais conservatoires ; en second lieu, il classerait les gages du capitaine et de l'équipage, qui passeraient donc du rang 3me au rang 2me. En troisième lieu, il admettrait les sommes dues pour sauvetage, pilotage et remorquage, pour dommages causés par collision, pour prêts à la grosse, qui deviennent la catégorie No. 3. Et puis, tous les dommages à la cargaison entreraient dans le quatrième groupe.

Quant au rang des créances du troisième groupe les unes vis-à-vis des autres, M. Carver les range dans l'ordre inverses des dates, mais chaque groupe conserverait sa priorité sur le groupe qui l'a précédé,de sorte que les frais de justice viendraient toujours avant les gages, les gages toujours avant le sauvetage ou l'indemnité d'abordage, les prêts de la grosse, et ces derniers avant les autres créances.

M. Carver a ensuite expliqué quelles étaient les raisons de cette classification à l'égard des créanciers du navire. C'est que si vous avez en présence deux personnes, l'une faisant crédit au navire, sachant avec qui elle traite, l'autre n'étant qu'un tiers, il faut donner la préférence au tiers.

M. Carver s'est occupé également de l'article 6 du traité disant, dans le paragraphe 2, que les questions de transfert devaient être laissées aux législations nationales. Faut-il décider d'une façon absolue que ce sera toujours la loi du pavillon qui régira l'effet de transferts ? Ce serait s'exposer à des critiques. Aujourd'hui, cette question est solutionnée tantôt dans l'un tantôt dans l'autre sens.

En résumé, les observations de M. Carver consistent en une modification de l'ordre des privilèges, en une introduction plus générale de la règle de l'ordre inverse des dates.

M. Leon Hennebicq (Bruxelles). Je m'excuse de prendre la parole après M. Carver, mais je réponds en quelque sorte à son appel.

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En effet au cours de la très intéressante communication qu'il a faite sur le droit anglais, lequel est beaucoup moins clair que l'exposé que M. Carver a bien voulu nous faire, il a posé cette question : « Mais quel est donc le principe dont s'inspire le droit continental en matière de privilèges et d'hypothèques ; je ne le saisis pas bien ».

Je vais m'efforcer, — puisque dans cette discussion générale et préalable, nous en sommes à indiquer des tendances, — à répondre à sa question, et de montrer quelles sont les raisons pour lesquelles on a adopté en cette matière sur le continent le système dont M. Carver ne comprend pas le principe.

Ce qui domine le droit anglais, en matière de privilèges, et ce qui résulte des explications de M. Carver, c'est la nature des risques auxquels est exposé le créancier.

Quelqu'un qui prête sur un navire s'en remet en quelque sorte les yeux fermés aux hasards de la navigation qui vont apporter à son droit une série de primautés impossible à prévoir.

Dans l'idée continentale, il en est tout différemment et les préoccupations de ceux qui ont règlé la question délicate et difficile des privilèges,a été de placer à côté de ce principe fondamental des risques un autre principe qui est celui de la sûreté du crédit. En face de ceux qui s'en remettent les yeux fermés à tous les risques,possibles du voyage, se sont placés ceux qui demandent qu'à ne se trouver qu'en présence d'un certain nombre de risques dans un ordre déterminé, afin que leur créance privilégiée sur un navire soit nettement établie. Voilà les deux points de vue, celui des prêteurs et celui des navigateurs.

A côté de ce point de départ, il y a dans les préoccupations continentales un élément complètement différent du point de vue anglais. En droit anglais, on vous l'a dit, on ne s'en tient pas au principe de la priorité des frais conser-

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vatoires ; c'est la raison pour laquelle on admet pour des créances d'ordre varié, un système basé uniquement sur l'ordre inverse des dates.

Dans la confection continentale, on s'attache à la qualité particulière des créanciers. Or, il y a des créanciers que l'on considère, dans notre législation, comme particulièrement intéressants, comme constituant une classe de gens qu'on veut favoriser d'une manière tout à fait spéciale, et c'est une préoccupation à laquelle aucun droit ne peut échapper, puisque le droit anglais lui-même n'y échappe pas; notamment en ce qui concerne les gages de l'équipage, il vous oblige de faire une exception formelle à son système. Mais à côté des matelots, des gens de l'équipage qui méritent une place spéciale, une faveur particulière, il y en a d'autres auxquels la loi continentale s'attache également à raison de leur qualité intéressante, par exemple les sauveteurs ; ils représentent également une classe de gens qui méritent les faveurs de la loi. Il faut encourager les gens à assister leurs semblables afin qu'il n'y ait aucune restriction au moment où les sauveteurs vont se trouver entre le sacrifice de leur propre fortune et la vie de leurs voisins ; pour qu'il n'y ait point d'hésitation, la loi dit : Soyez certains que vous serez toujours payés ; par conséquent, votre bonne action ne se trouvera pas mal récompensée.

Mais quand on arrive aux créances du chef d'abordage, où est cette qualité, cet intérêt, où est la raison de distinguer d'une manière spéciale celui qui a été victime ? C'est la raison pour laquelle dans les législations continentales, on voit que cette créance du chef d'abordage n'a pas de privilège ou que ce privilège est bien plus éloigné, confondu avec les gens moins intéressants.

Voilà les raisons pour lesquelles il y a désaccord entre les législations continentales et le système anglais.

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Et maintenant que je crois avoir expliqué les principes généraux, peut-être arriverons-nous plus aisément à trouver le moyen de nous accorder sans prétendre nous convertir l'un l'autre, car les divergences comme celles-là tiennent à des raisons trop profondes qui sont la suite de nos mœurs nationales, pour que nous puissions espérer opérer cette conversion,

Comme le projet de M. Carver en est le premier symptôme, il faudra prendre une solution mixte, mais dans lequel au point de vue de la primauté du privilège du chef d'abordage il est évident qu'une discussion très serrée va se livrer, les Continentaux ne pouvant admettre qu'on donne une faveur à quelqu'un qui doit son droit à un quasi-délit, c'est à dire des évènements qui sont intéressants seulement pour sa personne, et qu'on lui donne cette préférence pour obéir à la rigidité d'un principe qui est celui de classer les priviléges en raison de l'ordre inverse des dates.

Il faudra donc que nous en arrivions à une transaction ; et pour cette créance du chef d'abordage, il faudra lui assigner un rang à mi-chemin entre le N° 1 et le dernier numéro de l'énumération des privilèges, de manière à satisfaire à peu près tout le monde ; mais il paraîtra toujours impossible aux Continentaux qu'on donne le premier rang, comme en droit anglais, à une créance qui ne se justifie par aucune faveur.

(*Verbal translation by* Mr. Gow).

Mr. Hennebicq wished to explain the different principle embodied in the Continental practice from that which prevailed in the system of English law. In England the law was the notion of risk or of venture, according to which everyone assisting in the venture became as it were a partner, and those who went to render the latest assistance were the first to have a claim on the whole venture. The Continental idea was opposed to that. The idea was the security of

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the lenders; in other words, while in England the view which was always taken was that of the navigator or adventurer, on the Continent the view was taken of the creditor or lender. The Continental idea was to close the ranking of any particular lien, not according to the particular quality or character of the creditor, or, in other words, special privileges were granted to a special class of creditor. He pointed out that this principle was practically adopted in English law by the privileged position given to seamen's wages. The Continental law put the salvors exactly in the same favoured class, and did say on the ground that in their profession they ought to be encouraged, as their work was for the whole maritime advantage. What reason was there for putting a lien for collision in any special position of advantage; the original disagreement between English and Continental law was one which left no hope of any unity of principle, but after there had been a full discussion of the different principles it might be possible — although there was no hope of the one side or the other abandoning entirely its position — it might be possible to arrive at a compromised solution.

Mr. Francesco Berlingieri (Gênes) : M. Carver vient de faire une distinction, en matière de privilèges qui est très juste et très juridique. Il commence par faire la distinction entre les privilèges maritimes et les privilèges ordinaires, mortgages, hypothèques maritimes, etc.

Nous sommes certainement tous d'accord avec lui sur cette distinction qui est fondamentale.

Les divergences peuvent commencer seulement sur le point de savoir quels sont les privilèges maritimes.

Nous sommes aussi d'accord avec M. Carver en reconnaissant ce caractère au privilège de sauvetage. Ceux qui ont sauvé le navire ont le droit d'être préférés à tous les autres créanciers.

Ici, je me permets de faire une distinction et de former quelques observations à l'avant-projet qui nous est soumis. Comme vous le voyez, l'avant-projet met au même rang les privilèges des créances en faveur des sauveteurs et le privilége en faveur des créanciers du chef de remorquage

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et de pilotage. Or, je crois que le privilège de sauvetage doit primer toujours celui du remorquage et pilotage. Car ou bien le remorquage et le pilotage rentrent dans la catégorie du sauvetage, et alors ils viennent au même rang, ou bien il s'agit du remorquage et du pilotage ordinaires et alors il n'est pas juste que le pilote ou le remorqueur puisse avoir le même rang que le sauveteur.

M. Carver a mis au même rang du sauveteur les gages du capitaine et des matelots. Je crois que nous sommes tous d'accord avec lui en reconnaissant le mérite de ces personnes dont les créances doivent être préférées aux autres créanciers, mais je crois que sur ce point, il faut faire une distinction entre le privilège sur le navire et le privilège sur le fret.

Je crois que quand il s'agit de privilège sur le navire, les gages des matelots ne doivent pas avoir le même rang que les sauveteurs. Mais je crois bien qu'ils doivent avoir un des premiers rangs, le premier rang peut-être après les frais de justice, lorsqu'il s'agit de privilège sur le fret, car le capitaine et les matelots sont ceux qui ont contribué à gagner le fret et je crois qu'en cette matière, nous ne pouvons pas donner sur le fret d'autres privilèges qui pourraient primer ceux des gages de l'équipage ; mais je crois aussi que le tout premier rang qui revient à l'équipage sur le fret, ne leur revient plus sur le navire.

Je pense bien que sur ces questions, l'accord pourra se faire, mais la question est plus ardue quand il s'agit du privilège d'abordage. M. Carver met la créance du chef d'abordage au même rang que la créance pour sauvetage. Je crois que nous pouvons tous être d'accord pour accorder un privilège à la créance du chef d'abordage : il y a certaines lois qui admettent ce privilège ; il y en a qui ne l'admettent pas.

Je crois que nous ne devons pas défendre ce dernier

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système parce que ce serait accorder une certaine immunité au navire pour les dommages qu'il causerait par abordage. Par exemple, il pourrait arriver que le propriétaire prenne une hypothèque maritime sur son navire, et dans ce cas, comme le navire endommagé n'aurait pas de privilège, son action serait complètement stérile, et il ne pourrait rien obtenir parce que le navire abordeur serait à l'abri au moyen de l'hypothèque maritime que le propriétaire pourrait avoir inscrite pour la valeur de son navire,

Nous sommes donc d'accord qu'il faut accorder un privilège.

Mais je ne crois pas que nous devons suivre M. Carver quand il dit que nous devons accorder à ce privilège le même rang qu'aux créances pour sauvetage. Si je me rappelle bien, cette question a été proposée à la conférence d'Amsterdam et y a été complètement rejetée, et je crois quant à moi qu'elle l'a été à juste titre; car s'il s'agit là des privilèges maritimes qui surgissent de la navigation, ce n'est en tout cas pas un privilège qui doit avoir le même rang que des créances du chef de sauvetage.

Je crois que nous devons mettre d'abord les créances du chef de sauvetage,puis les créances pour gages du capitaine et des matelots et les créances pour le crédit accordé au capitaine pour les besoins du navire en cours de voyage.

Pour me résumer donc, je crois, et je pense que c'est aussi l'avis de l'Association italienne de Droit Maritime, qu'on devrait mettre au premier rang la créance du fisc et les frais de justice ; au second rang les créances du chef de sauvetage, et après seulement les créances pour remorquage et pilotage et j'insiste sur cette distinction, parce que s'il s'agit d'un pilotage ou d'un remorquage qui doivent être considérés comme un sauvetage, alors seulement ils peuvent entrer dans la catégorie du sauvetage. Mais, je n'entends parler que du pilotage et du remorquage ordi-

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naires, et mettre ceux-ci après les prêts consentis au capitaine pour les besoins de la navigation, en cours de voyage.

C'est bien là une créance maritime par excellence, et nous ferions quelque chose d'absolument contraire aux besoins de la navigation si nous n'admettions pas ces créances à jouir d'une préférence.

Et c'est après ces créances que nous pouvons admettre celle du chef d'abordage.

Si nous ne pouvons nous metre d'accord sur ce point, alors il faut suivre le système dont a parlé M. le Professeur Hennebicq : il faut faire des transactions, des compromis, et réserver aux lois nationales de régler certains privilèges, de la façon qu'ils croiront la meilleure. Tandis que si nous pouvons nous mettre d'accord pour admettre un privilège en faveur de l'abordé après les privilèges pour les gages de l'équipage, les frais de sauvetage, nous pourrons finir par nous mettre d'accord.

(*Verbal translation by* Mr. Louis Franck).

Dr. Berlingieri said that some distinction should be made between maritime liens and claims privileged at common law, such as mortgages and other similar things. The difficulty arose where they had to settle in what way that distinction had to be applied. Going through the lists of privileged rights as applied to the treaty, he objected to putting on the same rank ordinary pilotage and towage, on the one hand and salvage on the other. Salvage deserved preference. There should also be a distinction on that point between the ship and between the freight. Wages had contributed to make the freight, and should have a first-class privilege so far as freight was concerned, but did not deserve the same sympathy and the same order of privilege as far as the ship itself was concerned. As to collisions, he agreed that a privileged right should be allowed to that claim, but he objected to giving it the same rank as salvage. On no account should salvage be discouraged, and on no account should that be a reason for not getting anything. He therefore, was of opinion that salvage should be put first after the other two items in the treaty, and that

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pilotage and towage should also be put amongst things supplied during the voyage, and then collision claims should be allowed to rank.

M. Benj. MOREL-SPIERS (Dunkerque) : L'association française de droit maritime était assez disposée à se rallier à la proposition faite par la Commission internationale. Je vous demande seulement l'autorisation de présenter quelques observations personnelles que m'ont suggérées les très éloquentes remarques de M. Carver d'une part et de M. Hennebicq d'autre part, qui ont si clairement fait ressortir les grands différences existant entre le système continental et le système anglais.

Il y a quelques points qui sont déjà acquis au débat et nous savons d'une façon définitive que le privilège maritime, dans l'opinion générale est d'une nature spéciale, qu'il n'est pas acquis définitivement mais qu'il doit être sujet aux vissicitudes du voyage, et c'est pour cette raison, qui est à mon avis de très grande valeur,qu'à la conférence d'Amsterdam, nous nous sommes ralliés à la proposition que vous avez devant vous.

Nous admettons donc que le privilège pour abordage ne doit pas être exclu de notre code ; mais la question est de savoir quel est le rang qu'il faut lui accorder : doit-il avoir la preférence sur le privilège pour assistance, ou doit-on lui donner un rang inférieur ?

Nous avons déjà vu, par la discussion précédente, combien le désaccord est grand sur ce point. Les uns veulent mettre au premier rang le privilège de l'abordé pour la raison que celui qui est victime d'un abordage n'ayant pas contracté, doit être mieux placé que celui qui a contracté ; d'autres, au contraire, sans grande raison, veulent le mettre à la fin, après tous les autres privilèges ; d'autres enfin sont d'avis qu'il y a lieu de l'admettre, par transaction, entre le premier et le quatrième rang.

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Je crois quant à moi qu'il y aurait moyen d'arriver à une transaction; ce serait d'énumérer, de bien préciser quels seront les privilèges en laissant ensuite aux hasards de la navigation le soin de déterminer quel sera l'ordre des privilèges.

Il y a évidemment une exception à faire pour les créances de droit commun, les taxes obligatoires, etc., mais cela fait, on pourrait se borner à l'énumération des privilèges en se contentant d'une formule générale : d'une part les privilèges des tiers qui ont contracté avec le navire et d'autre part ceux qui ont conservé le gage commun, qui ont permis de continuer ou de terminer le voyage, en décidant que pour ces créances, on suivra l'ordre inverse des dates.

Voilà, dans cet ordre d'idées, le contre-projet pour l'article 3 que j'ai l'honneur de soumettre à la conférence.

On mettrait donc : en premier lieu, les frais de justice, taxes et impôts obligatoires ; c'est là une simple énumération ; en second lieu les créances pour préjudices occasionnés à des tiers par abordage ou autres accidents maritimes, pour avaries et manquants aux marchandises transportées, pour part contributive du navire en avarie commune ;

En troisième lieu, les créances contractuelles pour services ayant conservé le gage commun ou reconnus indispensables pour permettre au navire de continuer et de terminer son voyage.

Cette formule, MM., est plus générale ; elle comprend, par exemple, le remorquage. Je crois qu'il est dangereux de stipuler plus spécialement les créances pour remorquage. Si le navire est sauvé, ces créances seront comprises dans les termes généraux de ma proposition. Supposez qu'un navire arrive devant le port, mais qu'il soit indispensable pour lui permettre d'y arriver, de se faire remorquer ; dans ce cas, cette créance sera privilégiée, parce que ce sera

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une créance nécessaire pour terminer le voyage. Mais prenez au contraire un navire qui arrive à un port d'ordre et qui doit de là se rendre à Anvers mais les vents sont contraires et le capitaine, pour épargner le temps, prend un remorqueur. Dans ce cas, cette créance n'aura pas ce caractère d'urgente nécessité.

Ma proposition vise donc en réalité les créances qui ont conservé le gage commun.

Après cette énumération, il faut stipuler que les créances du dernier voyage doivent primer celles d'un voyage antérieur. Entre créanciers du même voyage, et à l'exception des frais visés sous le n° 1, c-à-d. des taxes, frais de justice, droits du trésor, la priorité des privilèges est en raison inverse de l'ordre des dates auxquelles les privilèges ont pris naissance.

Ce système a tout au moins, à défaut d'autre mérite, celui de la simplicité.

J'ajoute, au sujet des créances pour les gages du capitaine et de l'équipage, que je me rallie à M. Carver et aux autres orateurs pour leur donner le premier rang. « Les gages du capitaine et de l'équipage pour le voyage en cours avec une durée maximum de 12 mois. » Il est évident que cette créance va se trouver la dernière en date et dans ces conditions, elle se trouvera première. Nous serions donc complètement d'accord pour que cette créance vienne immédiatement après les frais de justices, taxes obligatoires, etc.

(*Verbal translation by M.* Gow.)

M. Benj. Morel-Spiers pointed out that the French Association in themselves were quite ready in certain points to admit the special character of the venture, but they were not sure that a case of this kind could be done. He proposed, as a kind of compromise, to class all privileged liens in three classes : First, to cover taxes, etc. ; secondly to cover damages to third parties or cargo, and, thirdly to debts of

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contract for services rendered and for necessaries obtained on the voyage. He pointed out that the order of the lien for towage should depend upou the circumstances under which the towage had been undertaken, and said it would not be fair to rank a towage which has been hired to save the ship as towage simply resorted to in order to save time on the voyage, or to save further expense to the captain. Within those separate classes he was willing to allow the system of taking the inverse order in which they occurred. With respect to the wages of seamen, he was quite willing they should be put in the second class between damage and the liens of third parties. They were actually the last to attach in point of date, and on the system of inverse order of date would be the first to rank.

Mr. JAMES SIMPSON (general manager of the Bank of Liverpool) : Your secretary suggested I should attend this afternoon's conference because the subject of mortgages and liens was to be under discussion. That subject interests bankers, and it is only from a banker's point of view I would at all like to say a word or two about it. First of all, I would like to say the most important thing from our point of view is to have certainty with regard to the nature of the different liens, and the priority of the claims. If we are to have certainty there most be certainty as to what different ranks these different claims take all over the world. Then it is a much more simple matter to insure and cover yourselves in all possible risks in advancing to shipowners, or in advancing in connection with ships at all. The general idea that prevails in English law as described by Mr. Carver, under which some certainty would be attained in the order of claims, is a very wise idea, and one which, with some modifications perhaps, may be adopted generally all over the world. With regard to those modifications it requires an expert to speak, but from the point of view of the banker. and I should say underwriter

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— and the two interests are very similar — it seems to me that everything ought to be done to encourage salvage, and therefore I should distinctly put salvage—claim first. Everything next ought to be done to discourage careless navigation and to indemnify the parties who suffer innocently in consequence of careless navigation, and therefore I should put second collision, and then, of course, there are the wages, pilotage, and other very necessary services rendered to the ship; but the one claim which I should put last would be claims for shortage of cargo, because it seems to me anyone shipping cargo does share to a certain extent in the prosperity of the venture, and, on the other hand, in priority to the claims for shortage of cargo I should certainly put the claims of those creditors who are financing the ship, those who are supplying the disbursements, those who are supplying the stores at different ports all over the world and who are taking simply the master's bills in payment. I think those bills ought to come in in priority to any claim by the owners of the cargo. The only other point to which I would like to refer is this, that it would be an extremely awkward thing if there were any uncertainty—in fact, it is at present an awkward thing that there should be any uncertainty—as to the time when a lien expires. There ought to be, it seems to me, some mode, either the mode proposed by the draft treaty before us, some mode of limiting the time during which a lien shall run—to twelve months say, or of advertising in recognised maritime centres and maritime journals, the fact of the existence of liens, but on the whole the time limit commends itself to my judgment. The main thing, as I said before, it seems to me from the lender's point of view would be to attain uniformity and certainty.

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(*Traduction orale par* M. Louis Franck).

M. Simpson a dit que cette question des privilèges intéresse beaucoup les banquiers. Ce qui leur importe, c'est d'avoir une certitude, un système clair et précis.

Il lui semble qu'il faut encourager le sauvetage et placer par conséquent la créance du sauveteur avant la réclamation du chef d'abordage.

Après cela, il considère qu'il est de l'intérêt général de la navigation que les personnes qui sans leur faute souffrent un dommage, — et par conséquent aussi l'abordé, — aient un recours privilégié. Puis viendront les contractants. Parmi ceux-là sont les chargeurs et M. Simpson pense que leurs réclamations sont moins intéressantes que celles des personnes qui ont fait des avances au navire pour lui permettre de terminer le voyage.

M. Simpson ajoute qu'une autre question essentielle c'est de fixer un temps pendant lequel le caractère privilégié des créances se maintiendrait. Il faut avant tout que l'on sorte de l'incertitude qui règne actuellement.

Mr. R. G. Marsden (London) : There are many Acts in England, such as Acts relating to wreck-raising charges, and I am not sure the light dues also, which are created by acts which are not generally known, and which I think will require a special provision as regards England in the wording of this treaty. It will be an extremely difficult thing for a Government to interfere with those Acts. The same remark applies, I think, to some of the public charges. I do not think they would come under this wording « public charges ». I do not think all of them would correspond.

The President : You do not think they would fall under charges under « public dues » ? You would desire some word of that kind, say « statutory charges » ?

Mr. Marsden : Something of that kind, I think, those Acts would require.

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The PRESIDENT : Mr Marsden has pointed out that the first clause of Article 3, naming judicial costs, taxes, and public dues, does not cover a class of claims which the legislation of this country has created in the form of special charges connected with wrecks and wreck-raising, and other matters, and which ought to be covered by something more full than the mere word « taxes » because they are not taxes, but special charges upon special things of which he, who has a very great knowledge of these matters, says there are a considerable number under Acts of Parliament.

M. LOUIS BENYOVITS (Fiume) : Je désire seulement faire remarquer que j'accepte l'ordre de l'article 3 de l'avant-projet.

Mais dans l'article *C,* on dit que les créances figurant à un même numéro dans cet article viennent au marc le franc, tandis que dans le paragraphe I de l'art. 3, on énumère les créances pour frais de justice, taxes, etc. Maintenant, au point de vue de la pratique, je voudrais vous faire remarquer que le juge, en lisant cet article, comprendra qu'il faut tout d'abord prélever les frais de justice, et si après il reste encore quelque chose, les taxes et ainsi de suite. Il me semble qu'il y aurait donc là une contradiction avec l'autre article.

(*Verbal translation by* M. FRANCK).

Mr BENYOVITS : said as far as he was concerned he agreed with all in Article 3 as it stood. He inquired whether there was any contradiction between the statement in Article 5, that « those claims which are classed under the same number in that article will have equal rights, » and the one in Article 3, where there is a numerous list — taxes, public dues, &c. He thought a judge looking at that would say, first come costs, then taxes, and then custody costs.

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M. Louis Franck (Anvers). D'après moi, quand vous énoncez cinq catégories, et que vous dites ensuite que les créances figurant dans une même catégorie viendront au marc le franc, cela veut évidemment dire que ces créances auront une proportion égale.

M. Benyovits (Fiume). Mais dans la pratique, le juge lira d'abord « frais de justice », et ceux-ci payés, il se pourrait bien qu'il ne reste plus rien pour les autres créances de la catégorie.

Mr. Louis Franck. En tout cas, je crois pouvoir vous dire qu'il n'y a pas de doute à ce sujet..

Mr. Jusice Kennedy (president). I will just point out to Mr. Benyovits that his difficulty arises with regard to the mere wording of part of the article. Articles 3 and 5 we shall deal with when we come to take them article by article. We will then be able to bring forward any motion as to the wording. At present we are discussing the general principles of the whole scheme.

M. Charles Le Jeune (Anvers). L'échange de vues auquel nous venons d'assister est particulièrement intéressant par la variété des idées qui ont été développées devant nous et assurément, ces idées variées donnent matière à ample réflexion. Cependant, il semble qu'au fur et à mesure que cette discussion s'avance, il se fasse un peu de clarté dans nos esprits et que les idées générales pourraient arriver à se dégager d'une façon satisfaisante.

Le seul point qui semble encore en ce moment sujet à difficulté assez réelle, c'est le privilège du chef d'abordage. Pour les autres points, il ne semble pas que nous soyons en désaccord effectif.

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Les détails, nous y passerons plus tard ; pour le moment occupons-nous des principes.

Je pense, en ce qui me concerne, devoir appuyer dans une assez large mesure le point de vue émis par l'honorable M. Simpson. Je le trouve excessivement juste et conforme à l'état actuel du commerce et de la navigation. Il est en effet certain que grâce à l'assurance qui est à la base de toutes les opérations maritimes aujourd'hui, on peut viser à rendre les privilèges aussi peu nombreux que possible, de manière à donner au crédit maritime une assiette solide. Pour cette raison, MM. je crois qu'il faut envisager les choses à peu près dans l'ordre suivant. Le navire a besoin du crédit ; le navire, que grèvent souvent des hypothèques, des mortgages, est un gage qui doit se trouver pour le prêteur dans des conditions claires. C'est ce qu'a demandé M. Simpson et c'est ce qui me paraît parfaitement juste, car les difficultés commencent le jour où des privilèges occultes, que l'on ne peut pas connaître, viennent enlever toute sécurité au prêteur. Ces privilèges, dans une certaine mesure, peuvent être garantis quand ils ont une cause maritime, un accident maritime à leur base, et c'est pour cette raison que je crois qu'autant que possible il faut, dans l'appréciation du privilège, envisager sa cause. Cela est d'autant plus nécessaire parce que, en raison de la limitation de la responsabilité, certaines créances n'ont d'autre gage que le navire lui-même. Si vous entremêlez à la fois des créances qui ont l'action personnelle et d'autres créances qui n'ont devant elles que le navire, vous vous trouverez enlever à ce créancier qui n'a devant lui que l'action réelle une large part de ses garanties.

Pour cette raison, je crois qu'il faut envisager les choses de la façon suivante : que les créances maritimes dont les risques peuvent donner lieu à l'assurance doivent être

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considérées comme plus dignes d'intérêt que celles des créanciers ordinaires ayant fait un crédit personnel à l'armateur, et je crois que dans cet ordre d'idées, vous devrez supprimer le pilotage ou tout au moins le remorquage ordinaire. Il n'y a vraiment aucune raison particulière pour trouver là une cause de privilège. C'est un de ces nombreux services ordinaires que l'on rend à la navigation, à l'armateur, et de même que d'autres créanciers qui font crédit à cet armateur pour les petites sommes qui leur sont dues, ceux-ci peuvent le faire de la même façon.

Je ne dirai rien des gages du capitaine et de l'équipage. Il faut évidemment maintenir ce privilège d'une nature délicate, au premier rang.

Quant aux débours du capitaine et des avances pour le navire pendant le dernier voyage, j'abonde dans les idées de M. le professeur Berlingieri. Il est évident d'ailleurs qu'il ne peut s'agir ici que de dépenses faites dans le cours du voyage pour les besoins indispensables du ravitaillement, pour des réparations urgentes au navire, afin de lui permettre d'accomplir son voyage. Cette idée n'est pas exprimée dans l'avant-projet, et il devrait être complété dans ce sens.

Pour les prêts à la grosse, je ferai les mêmes remarques. Dans certaines lois il existe un genre de prêt à la grosse qui n'est qu'une hypothèque maritime. Sous ce rapport, l'avant-projet demande une modification.

Restent alors sous le N° 5 « les dommages-intérêts pour avaries et manquants, les créances pour réparations, fournitures, victuailles, équipement, main-d'œuvre, pour autant seulement que ces créances soient nées et exercées au port où le navire se trouve ou dans les ports du même pays où il fait escale pendant le même voyage. »

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Cet ensemble est si complexe qu'il faudrait y trouver une simplification.

J'arrive maintenant à l'objet principal : aux créances causées par abordage.

C'est là qu'est évidemment le conflit et je me suis aperçu, avec une certaine satisfaction que sur ce point il y avait une différence entre les idées de l'honorable M. Simpson et celles de M. Carver et que nous trouvons déjà là un terrain de transaction. — M. Simpson place, lui, la créance du chef d'abordage après celle du chef de sauvetage et se rapproche par conséquent de l'idée continentale, et je pense que réellement, il ne semble pas qu'aucune raison décisive ait été donnée jusqu'à présent pour accorder à cette créance d'abordage le même rang qu'à la créance pour sauvetage. Il est certain que celui qui a conservé le navire, celui qui a été cause que le créancier pour abordage reçoit une indemnité, mérite la préférence. A défaut d'elle, ce créancier n'aurait touché aucune espèce d'indemnité. Il faut donc qu'elle passe avant. Il est inadmissible que celui qui a sauvé ou gardé votre bien soit privé du fruit de ses efforts. C'est une idée qui du point de vue de la justice ne me paraît pas soutenable. Elle n'a d'autre fondement que le principe général qui a semblé prévaloir en Angleterre, qu'un créancier qui n'a pas contracté est plus intéressant que celui qui l'a fait. Or, quand il s'agit du contrat d'assistance il n'y a qu'un contrat précaire car il peut être rescindé. Mais même dans les créances d'abordage, il y a une certaine nuance, si vous les examinez bien à fond ; ces créances sont à la fois des créances de tiers et des créances de chargeurs à bord du navire lui-même. Et je me demande, dans ces conditions, si vous allez faire une nouvelle distinction et si parmi ces créanciers, vous allez distinguer ceux qui sont de simples tiers et les chargeurs du navire en faute qui sont

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des contractants. Il faudrait donc là faire une catégorie spéciale.

Je crois que, tout bien considéré, nous parviendrons, — si du côté de l'Angleterre, nous ne nous trouvons pas en présence d'une idée absolument arrêtée, — nous parviendrons à nous mettre d'accord sur un ordre qui peut satisfaire tout le monde.

Mais la question me paraît un peu grosse à résoudre sans avoir sous les yeux les nombreux amendements qui ont été déposés entre les mains de M. le Président et je me demande, pour une question aussi difficile que celle-ci, s'il n'y aurait pas grand intérêt à faire imprimer ces divers amendements et à les faire remettre demain matin au début de la séance.

(*Verbal translation by* Mr. Gow)

M. Le Jeune (Belgium) said it seemed to him that they were coming to some common form of understanding. He generally approved to the ideas expressed by Mr. Simpson. What he thought was wanted was that those persons, such as bankers and others who give credit to the ship, might be able to look to their insurance. Therefore, he argued, as few privileges as possible were wanted, and they should know exactly what those privileges were. One of the elements of the problem was, therefore, to consider the claims and the causes which were to be considered as being capable of insurance in this way, that a man who lent money upon the ship might be able to insure himself against the risk of a claim of that sort arising. The second element was that they must consider that under the law of limited liability some persons can only look to the ship. On the other hand, you must be careful as to the claims under the common law which you bring in. Passing then to Article 3, M. Le Jeune made some observations as to the various items of this article, saying that pilotage and towage could be omitted as being claims for which the creditors could easily provide themselves without having a privilege and a lien. Passing on, the speaker said that, as far as the wording of No. 5 was concerned, it should be expressed therein that master's disbursements, bottomry bonds, and similar things should only have a privileged claim so far

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as those were contracted for the necessities of the voyage, for in some countries a bottomry bond might be taken before the ship left the port, and a bottomry bond of that kind should, in his opinion, only act as a mortgage. Coming then to what he regarded as the most important part of the debate viz., the collision claim, M. Le Jeune suggested that some form of compromise might be found, perhaps in the way suggested by Mr. Simpson. The latter had differed from Mr. Carver on the fact that salvage should rank before collision, and he thought Mr Carver was placing lien for collision damage under the same head, whereas Mr. Simpson was of opinion that collision should rank first and that damage should come afterwards. In conclusion, M. Le Jeune thought that the amendments should be printed for Saturday, so that they could come to some arrangement on the matter.

The PRESIDENT : There is one point upon which Mr. Carver would like to say a few words — upon a point which has arisen since he was good enough to address us.

Dr. ALFRED SIEVEKING (Germany) : I only want to say, Mr. President and gentlemen, on behalf of the German delegates, that we adhere to the view expressed by M. Le Jeune. That is all that I was going to say.

MR. CARVER. I think that this discussion brings out certain smaller matters which we need not dwell upon at the present moment ; for instance, as regards pilotage and towage, but they are small matters, and I think it is very difficult indeed to separate pilotage and towage from what has been put into the first category, and then to separate them from salvage. I will not enlarge about that at the present time. The one point which seems to me to come out in this discussion as a point of difference is this : How ought you to compare a salvage claim with a collision claim ? That is the real issue. I think, between us, I entirely appreciate the view that has been put forward by several speakers. Mr Simpson, for instance, thought you ought to

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reward salvors if you can, and therefore Mr. Simpson says put them first. M. Le Jeune says put them first too. Then Dr. Sieveking re-echoes M. Le Jeune, and of course, that is a very plausible and bright view. But think for a moment what it is that you are insisting upon. Salvage ordinarily does come first upon our principle, because salvage is nearly always the last thing that happens before the ship is sold. Therefore it is not ordinarily necessary to make a seperate category for salvage, and it is highly desirable to make as few categories as you can do with, because exceptional cases do arise in which the category becomes an injustice to a hard and fast line. Now let me give you an illustration, if I may, which happened in Liverpool here not very many years ago. A ship was brought into port by salvors and was anchored. She broke away from her moorings and did damage. Now in that case there is really no particular justice for allowing a salvor to come before the damage claimant, because the salvors do not complete their work. They had got her to a certain point, and they left her there but from that time forward they surely are taking the risks of the ship. There is no particular ground of justice for making them come before the claim of the damage which was suffered afterwards. Now that is a very exceptional case, because as I say, ordinarily the salvor is the man who brings the vessel to port and has the last claim upon the vessel, and he, therefore, in order to save time — I mean according to the ordinary rule the last comes first, and he will get the first ; and so I urge you to consider that — is it necessary to make a separate category, and I submit to you that it is not necessary, that in that exceptional case in which the salvor is not the last claimant he ought not to be the first to receive it — I mean the last whose claim shall arise, because you may take another case. Suppose a salvage is done away at sea and you have not got a port

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immediately at hand in which to refer the ship. She has to be taken somewhere ; surely the salvor is running the risks and properly running the risks, of that subsequent transit, and supposing in that subsequent transit another salvage took place, it ought to come before the first. Supposing it is necessary to take up money on bottomry for completing the voyage and getting in a place were the vessel can be sold. That ought to come before the salvor. The salvor is a man who in his particular case, though I have no doubt it is a very extraordinary case, is running the risks of the subsequent voyage, and unless that subsequent voyage is accomplished and the ship is brought home to safety he will not get his claim at all, and therefore I suggest that there is really no injustice in putting the two in the same category. It is all covered by the rule that the last service shall be paid first.

(*Traduction orale par* M. Le Jeune).

M. Carver nous a exposé ses vues, je pense, au sujet de certaines observations qui ont été faites et il a particulièrement insisté sur la dernière question qui nous divise le plus : celle du sauvetage et de l'abordage. Il nous a fait remarquer, comme il l'avait déjà fait dans sa précédente allocution, qu'il y a là un risque devant inévitablement peser sur le sauveteur et que ce risque, naturellement inhérant à son aventure, ne doit pas lui être épargné ; qu'il ne voit donc pas pour quelle raison ce sauveteur éventuellement devrait être privilégié avant, par exemple, le prêt à la grosse fait ultérieurement pour conserver le navire et le mener à bon port.

Puis, il a fait remarquer qu'en général ce sauvetage ne faisait pas encourir, par la nature des services eux-mêmes, un grand risque, en matière de privilèges, à d'autres créanciers, parce que ce sauvetage s'effectue ordinairement tout près de la destination ; et que ce n'est que dans des cas absolument exceptionnels qu'il en est autrement.

Donc, le plus souvent, l'exercice même du privilège aurait lieu de telle sorte qu'il ne pourrait pas être frustré de ses droits et il ne voit pas pour quelle raison il faudrait que le privilège du sauveteur passât

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avant celui de l'abordé ; et en conclusion, M. Carver croit qu'on pourrait les mettre dans la même catégorie.

The PRESIDENT : Now, gentlemen, I think it is time for this session, at your convenience, to rise. We shall not have very much time, I am afraid, to-morrow ; but in order to make the best use of our time I think that the suggestion of M. Le Jeune should be followed, and those who have made up their minds as to any particular amendment which they wish to have put—would they kindly put it on paper and give it to the Bureau, with the proposer and seconder, so that we may, in dealing so far as we can deal to-morrow with these various articles, save as much time as possible in asking the conference for their opinion. We will adjourn now until half-past nine to-morrow morning.

The meeting ajourned til Saturday.

La séance est levée.

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SITTING OF SATURDAY, JUNE 17th 1905.

SEANCE DU SAMEDI, 17 JUIN 1905.

Closing proceedings. — Séance de clôture.

Maritime Mortgages & Liens on Ships

(DISCUSSION CONTINUED)

Hypothèques et privilèges Maritimes

(CONTINUATION DE LA DISCUSSION)

The sitting opened, Mr. JUSTICE KENNEDY, president, in the chair.

La séance est ouverte sous la présidence de M. JUSTICE KENNEDY, Président

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Dr. ANT. VIO (Fiume). Die verschiedene Forderungen welche ein Schiff belasten können, können in verschiedenen Klassen geteilt werden, und diese Vertheiling soll nach der Art der Forderungen geschehen,

In der ersten Gruppe kommen die Forderungen für Leistungen und Auslagen die gemacht sind nach Ankunft des Schiffes im Hafen weil sie gemacht worden sind für die nothwendigen Bedürfnissen des Schiffes, sowie die Auslagen zum Verwerthen des Schiffes. Dass diese Auslage und diese Leistungen allen anderen Forderungen vorgehen sollen, scheint mir gerechtfertigt, weil ohne diesen Auslagen die übrigen Glaübiger ihre Rechte auch selbst nicht ausüben können.

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« Les frais de justice, faits dans l'intérêt commun des
« créanciers, pour des actes conservatoires et d'exécution
« sur le navire ; 2) les frais de garde du navire, non com-
« pris dans le n° 1, depuis le moment de son arrivée au
« port d'exécution jusqu'à la vente. »

Obwohl diese verschiedene Forderungen in erster Linie kommen sollen, kommt aber jetzt die Frage, ob sie auch allen in einer Klasse stehen sollen, oder ob man sonst noch Unterabteilungen machen wird.

Mehrere Gesetzten haben hier auch ein Unterschied angenommen und setzen sie in einer gewissen Ordnung. Ich bin auch der Meinung dass die verschiedene Forderungen nicht auf dieselbe Reihe stehen können aber ich glaube dass es besser wäre weitere Unterabtheilungen zu machen, und zwar wie ich eben sagte.

Falls aber diese Detail-Frage zu viel Schwierigkeiten anbringen sollte, werde ich mit einer Gruppe zufrieden sein ; daran muss ich aber halten dass die eben genannten Forderungen allen anderen vorgehen.

Die folgende Gruppe besteht aus den Forderungen die vor der Ankunft des Schiffes im Hafen enstanden ; zweitens giebt es noch die Forderungen das Kapitäns und der Matrosen die das Schiff zum Hafen einbringen.

Solche Forderungen wie Lotsengelder, und Schlepplohn, sowie Hafenabgaben sollen natürlich den vertraglichen Pfandrechten vorgehen, denn sie waren dem Schiffe nothwendig um im Hafen zu glangen. Auch das Lohn des Kapitäns und der Matrosen ist nothwendig damit das Schiff zur Bestimmung komme ; denn falls der Kapitän und die Matrose zu fürchten hätten dass ihr Lohn ihnen nicht bezahlt werden sollte, imfolge späterer Schulden, so könnte es leicht geshehen dass sie ihre Dienste verweigern würden, und in solchen Falle würden auch die Forderungen der anderen Gläubiger in Gefahr kommen. Des-

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halb bin ich der Meinung wir sollen auch den Forderungen des Kapitäns und der Matrosen einen Platz einräumen vor den später entstehenden Forderungen.

Was nun aber die Gerichtskosten betrifft, so giebt es doch auch eine Ursache weshalb diese vor den anderen Forderungen müssen; wir wissen ja gar wohl dass die verschiedenen Staaten so leicht auf ihren Rechten nicht verzichten werden; wir haben daher eine zweite Gruppe der Forderungen die in erster Reihe kommen. Nun wird man fragen welche Forderungen den Vorzug haben werden; nach meiner Ansicht diejenige der Schiffsleute; aber weil ich Grund habe zu glauben dass die Staaten das nicht anerkennen werden, so bin ich geneigt die Gerichtkosten in erster Linie anzunehmen.

Weiter kommen die Forderungen für Hilfeleistung, Killisions-Schaden, allgemeine Haverie, das Darlehen für dringende Bedürfnissen des Schiffes, Auslagen die der Kapitän aus seinem eigenen Gelde macht oder Obligationen die er aufnimmt, das alles müssen wir in Anbetracht nehmen. Sie sollen auch privilegirt sein, denn diese Auslagen und Obligationen sind auch zu Gunsten des Schiffes und der anderen Forderugen gemacht worden. Die Bergung, Hilfeleistung, Grosse-Haverie, das alles ist augenscheinlich auch zu Gunsten des Schiffes und der Ladung, damit das Schiff zum Bestimmungsort angelangen könne. Ohne diesen können die andere Gläubiger selbst nichts erhalten.

Eine Konsequenz dieser Theorie ist dass eine Hilfeleistung, eine allgemeine Haverie, eine Bergung, u. s. w. die später stattfinden, auch wieder vor gleichen Ereignissen die früher stattfunden, kommen sollen, denn sie haben die Rechten der anderen Gläubiger gesichert.

Hier kommt eine Frage die schon während der Amsterdammer Konferenz zur Discussion ist gekommen. Man wird noch mal erwidern dass ein solches System ein

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Gefahr darstellen wird für das maritime Krédit ; doch muss ich bei meiner früheren Ansicht festhalten ; die Gläubiger die in contractlichem Verhältniss stehen können ihr Risiko auch durch Versicherung decken ; es steht ihnen dabei auch offen einem unsichern Debitoren Kredit zu verweigern ; nun ist es aber sicher dass die Gläubiger die Kollisions-Schaden erlitten haben, nicht in derselben Lage sind.

Weiter muss ich noch bemerken dass, falls wir die vertraglichen Pfandrechten vor anderen Gläubigern stellen, könnte der Rheder sein Schiff leicht mit so vielen Pfandrechten absichtlich beschweren dass er thatsächlich frei von aller Haftung bleiben würde für jede Kollision.

Die Frage ist nur in welcher Gruppe Sie die Kollisions-Klage aufnehmen werden. Nach dem Englischen Gesetz kommt diese Forderung in erster Reihe, gleichzeitig mit Hilfeleistung und Haverie. Wenn Sie aber logisch sein wollen und Sie sich bei einem Princip halten wollen, müssen Sie doch gestehen dass Kollisions-Schaden doch nicht dieselbe Rechte wie z. B. Hilfeleistung, haben dürfen. Zwar litt der Rheder, imfolge einer Kollision, einen Schaden, aber auch die andere Gläubiger falls sie ihre Rechte nicht ausüben können.

Das ist daher nicht ein genügender Grund um die Kollisions-Klage den Vorzug zu geben vor den erst-genannten Forderungen. Diese letztere haben ihre Leistungen geopfert zum allgemeinen Interesse, weil der Kollisions-Gläubiger nur imfolge einer « fortune de mer » gelitten hat.

Falls, während einer Reise, es eine Kollision gegeben hat nach einer Hilfeleistung, würde es ohne Zweifel unrecht sein dass der Hilfeleister seine Rechte verlieren würde ; falls aber die Hilfeleistung nach der Kollision stattgefunden hat, so ist es doch selbstverständlich dass der letztere Gläubiger die Rechte des vorigen geschützt

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hat. Wenn wir aber das allgemeine Princip annehmen dass die Forderung für Kollisions-Schaden in derselben Reihe mit der Hilfeleistung kommt, haben wir die unrechte Konsequenz die ich soeben angedeutet habe.

Obschon ich gar nicht der Ansicht bin dass der Kollisions-Gläubiger kein privilegirtes Recht haben soll, glaube ich doch dass er nur nach dem Hilfeleister kommen soll.

(*Verbal translation by* Mr. Alfr. Sieveking).

Dr Antonio Vio, Sen. proposed a new order of liens. His idea was that the first charge should include those debts which 'had accrued after the arrival of the ship in order to maintain the ship. The second in order should comprise the pnblic charges and wages of the master, because without these two the ship would not have arrived. The third order should give other charges and general average, and those debts which had been incurred — necessarily incurred — in order to enable the ship to perform the voyage, and the debts of this class should rank in the inverse order of dates. Then turning to collisions, Dr. Vio said he considered that the only reason for giving the lien to a collision case was that both the ship and others had suffered damage through the collision. Those who had given money to the ship suffered very heavy damage afterwards. The second reason for giving precedence to collision over certain other classes was that they had voluntarily given their money into the ship, whereas this was not the case with the collision character Dr. Vio alluded to debts incurred during the voyage which were based upon contracts These Dr. Vio ranked last, because he said that the parties concerned could in making a contract safeguard their rights by inserting certain clauses.

Mr. Douglas Owen (London) : Mr. President & Gentlemen, — I propose to detain you but a very few moments, but as a British representative I have been turning over in my mind the question of the priority of lien to be given to salvors as against the claim of those wo have suffered damage by collision. It seems to be rather a crux to the English members, and we were very much impres-

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sed by the fact that our law makes no such distinction — gives no priority, I believe — but I cannot help thinking on consideration that this is a case where we should endeavour to meet the views of our Continental friends by giving as far as possible a priority to the claims of salvors There are several reasons why we should do so — for one the salvors only get after that such sum as may be awarded to them, which sum I take it, in practice, never exceeds 50 per cent. of the value of the property which they have salved. On the other hand, the man who has suffered damages by collision — he has the claim to the full value of the property which is damaged, whether it be calculated at 8*l.* a ton or whether it be the actual value. Therefore the law, in a pecuniary sense, gives you the distinct priority and it is a priority which the salvors do not possess. Then, again, the salvors frequently contract on the basis of « No cure no pay » which is a position which entitles them to considerable regard on the part of underwriters and others, and finally it is in the interest of the mercantile community generally — it is in the interests of life and civilisation that the utmost consideration should be shown to salvors. It is to the interests of all of us that salvors and salving should be encouraged, and speaking as an underwriter, I should never complain if the amount to which I was entitled for damages by collision should be reduced by the prior claim of salvors. I feel that strongly that underwriters, so far as they are concerned, and so far as I am entitled to speak of them, would be quite willing that the claim of salvors should take the precedence to the claim of other people. M. Carver gave us an exception yesterday, showing us how it would be unfair apparently to give that precedence, but we also know him sufficiently well to know that he would find no difficulty in giving a corresponding illustration in exactly the converse sense

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though at the same time we must recognise that there may be cases. The rule that I advocate generally should have those exceptions, and I think that this Committee might reasonably say that. I hope my British colleagues would feel inclined to support me in this, that as a matter of broad principle the claims of salvors should take precedence over the claims of those who have suffered damages by collision, but we must recognise that there are, or at any rate there may be, exceptions to that rule, and I think that a meeting of this kind — that the whole subject requires much more consideration than a meeting of this kind can give to it, and we should content ourselves in accepting the principle and leaving those exceptions to be found, and dealt with as may be required by a sub-committee. But I do feel that if this Association is ever to do any good at all — and I believe it has done, and will do, a great deal of good — it must needs be on the principle of give and take. We must not attach too much importance any of us, whichever nation it may be, to the questton of our own law, a law in our case with which long usage has so long familiarised us that we may believe it is not only law, but that it is right, and reason, and common sense, which may or may not be the law, but to exclude the law and to recommend a basis which commends itself to the common-sense of all of us, and I think on the grounds that I have given that this is one case in which the English members might show a disposition to give, and I hope that that will be the view of my colleagues.

(*Traduction orale par* M. Louis Franck)

M. Douglas Owen nous a dit qu'après avoir mûrement réfléchi à ce qui a été dit d'une part par plusieurs membres du Continent et d'autre part par les explications données par les membres anglais. et notamment par M. Carver, notamment sur la question de savoir comment

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il faut classer le recours du chef d'abordage et d'assistance, il est arrivé à la conclusion qu'il y a une grande partie de vérité dans ce qui a été dit à ce sujet par les membres du continent. Il lui semble, dit-il, qu'il faut placer le privilège de l'abordé immédiatement après celui pour assistance, et qu'il y a pour cela de bonnes raisons.

La première, qui est une question essentiellement pratique, c'est que le sauveteur ne vient jamais réclamer qu'une portion de la chose sauvée, de telle sorte qu'en donnant au sauveteur le pas sur l'abordé, celui-ci trouvera toujours un certain montant comme indemnité. Si au contraire, vous placez l'une et l'autre créance sur le même rang, vous allez diminuer la quote-part du sauveteur de tout le rapport généralement très disproportionné qui existe entre l'indemnité de sauvetage et le montant de l'indemnité d'abordage.

La seconde raison pour laquelle il faut favoriser les sauveteurs, c'est que très souvent ils entreprennent ces opérations difficiles et dangereuses selon le principe « *no cure, no pay* ». Courant de pareils risques, il n'est que juste que la loi en tienne compte et que lorsqu'ils ont ainsi mérité une rémunération, elle ne leur soit pas enlvée par le jeu des privilèges.

En troisième lieu, il paraît bien qu'il est de l'intérêt général, et sans distinction de nations, d'encourager de toutes manières, dans une mesure raisonnable, les sauveteurs.

Pour ces raisons, M. Douglas Owen serait d'avis de placer le privilège de l'abordé après le privilège du sauveteur, de ne point le ranger dans le même groupe.

Toutefois, il lui paraît possible qu'il y ait d'exceptions à faire à ce principe et c'est pourquoi il serait d'avis de renvoyer à une sous-commission les différentes vues qui ont été échangées ici.

The PRESIDENT : No other gentleman seems to wish to address the conference, and therefore, with the permission of the conference, listening as I have done to this very interesting discussion, I wish to make a suggestion as to the procedure in regard to this treaty. It is quite clear that while there are some points of difference, those points are only of adjustment, and they are capable of adjustment best if they are discussed in the way in which a small committee can discuss them rather than an assembly of this kind,

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because, for one thing, I think that the variations of opinion depend largely upon wording. We have got here as regards the main question discussed the differences which can be adjusted by placing in categories few or many — and, if I may be permitted by the conference to express humbly my own view, the fewer the better — categories of a number of different relations into which a ship either by the choice of the shipowner or his misfortune is brought. We have got also, I cannot help feeling, no time here to-day to deal with this treaty article by article, and a mere general opinion on the subject with a number of reserves would be of little or no value at all unless you can formulate your points of difference and reserve them, nominate one by one expressly — it seems to me that a mere general opinion upon this treaty would be no good at all — (hear, hear) — and although I might venture, although I must say I do not want to create difficulties for a committee upon which I do not sit, at the same time I am conscious also that behind these questions which we have been discussing, and which I hope will prove to be the only questions requiring very serious adjustment by those who have to consider them, there are also matters that have occurred to me listening here which will require consideration in order to make this treaty so perfect that a future conference can accept it without practically any alteration. Speaking for a moment as a listener here, and bringing to the consideration one's study of the law, it seems to me that, for exemple, both in Article 3 and Article 5 there is a matter which certainly would have to be more definitely stated before a workable treaty ought to be accepted by a business conference, and those words especially « same voyage » and « last voyage. » The word « voyage » is obviously capable of various interpretations bearing upon this very matter of priorities and knowing the way in which many ships make

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voyages now, calling at many ports — each of them may, in a sense, be treated as a destination — looking at the habit of many ships of many nations, but certainly of England, to make contracts for voyages which are really round voyages, I think that that at any rate is a matter which will require some explanatory clause in it of what the conference here, if it should adopt the treaty, means when it uses the words « same voyage » and « last voyage, » because all these epithets are important epithets. Lastly, I should suggest that we should have to consider, possibly carefully, in Article 6, what is precisely meant by the expression « the national laws regulate the effect of the transfer, » because « national laws » is a phrase which is not exacly a legal phrase. It is obviously capable of more interpretations than one — whether it merely means the law of the country in which the ship then is or the law of its flag, which are almost diametrically different or may be diametrically different. Well, in view of the discussion, and at the same time the closeness with which some of the speakers of different countries approached one another in their views, I respectfully submit to te conference that at this stage of the third day — as an additional consideration, but mainly also in order to get at some little practical good by discussion of the subject and the completion at a subsequent conference of the treaty as a whole, I should ask whether the conference might not agree with me in the suggestion which I respectfully proffer to it, that we might agree to this resolution which I am going to read in order to enable this matter to be continued in a practical shape. As you are aware, this matter has been already referred to a commitee, who have not had an opportunity of personally meeting and personal consideration at all. That is stated in the programme which you have before you, in the Annexe 2. You will see there that while the conference had expressed the

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desire to see a commission constitued, and then proceeds to give the names, and that the Bureau did submit this treaty to the committee, divers circumstances and the date of the conference at Liverpool had prevented that commission from meeting. Now I should suggest in the form which I am now going to propose whether the time has not come for asking that committee to consider the subject by the light of the very valuable contributions and discussions which we had to-day. They had not the benefit of meeting, they certainly had not had and could not have the knowledge of the views which have been so ably expressed by most competent speakers from various countries, including our own, and I also think that it might be an advantage, seeing how nearly such experts as Mr. Carver and M. Le Jeune and others who have been here, seem to approach upon the main subject we have discussed — the question really as to the claims for damage by collision and salvage — how nearly the categories seem to be agreed, but while leaving a real subject to be discussed it would be well to ask the Permanent Bureau to add to that committee some of those who have enlightened us here to-day, and who will bring much knowledge to the committee, and I think be able to state what are the real points of difference; and I would therefore propose — I will read the resolution in a moment — that we should agree unanimously to the reference of this to the old committee with a request that the Bureau would add to its number and, of course, if there is anybody else that is wished the names will be added, but I should suggest myself that Messrs Morel-Spiers, Le Jeune, Leslie Scott, William Gow, and M. James Simpson, representing the most important interest, that of the banks, would allow their names to be added to that sub-committee. We might request the committee to refer this matter to them with the benefit of our discussion and suggestions

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and the special knowledge which has been shown by those gentlemen and their interest in the subject, and which will be translated to you in a moment for the benefit of those gentlemen who do not follow what I have expressed in English. I should suggest to you that you should now accept this as a general end of the discussion to-day. The resolution is as follows : —

« THAT THIS CONFERENCE, SEEING THAT THERE SEEMS TO BE EVERY PROSPECT, IN VIEW OF THE VALUABLE DISCUSSIONS AND SUGGESTIONS MADE TO THE PRESENT CONFERENCE, OF THE ADJUSTMENT OF THE EXISTING DIFFERENCES OF OPINION, AND, FURTHER, THAT THE FORM AND LANGUAGE OF THE DRAFT TREATY AS IT STANDS REQUIRE REVISION, REQUESTS THE PERMANENT BUREAU TO REFER THE MATTER AGAIN TO THE EXISTING SUB-COMMITTEE, ADDING TO ITS NUMBER MESSRS. MOREL-SPIERS, LE JEUNE, LESLIE-SCOTT, WILLIAM GOW AND JAMES SIMPSON ».

If you approve of that. Well, if not, I will endeavour to take such a course as the conference prefers — (*hear, hear and applause*). I think I may take it then, gentlemen, that my suggestion meets with your approval, and if so we need not take any vote upon it.

(*Traduction orale par* M. LOUIS FRANCK).

M. le Président, après quelques intéressantes explications au sujet des termes du traité, sur les hypothèques et les privilèges, a proposé la résolution que je vais vous traduire :

« La Conférence, prenant en considération qu'il apparait que de » toutes parts, en présence des vues échangées et des propositions » faites à la Conférence, il y a des chances d'aboutir à une conciliation entre les divergences d'opinion encore existantes, prenant » en outre en considération que la terminologie de l'avant-projet » de traité, tel qu'il est proposé, requiert révision, prie le Bureau » Permanent de soumettre à nouveau l'avant-projet à la Commission nommée déjà par lui en ajoutant aux membres de cette » commission les noms de MM. Morel-Spiers, Le Jeune, Leslie Scott, » William Gow et James Simpson ».

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M. le Président me prie de vous donner en même temps connaissance de la liste complète des membres de cette commission. Ce sont: MM. Acland, Asser Jr., Berlingieri. Carver, L. Franck, Fromageot, Will. Gow, Hennebicq, Ch. Le Jeune, Lyon-Caen, Marghieri, Morel-Spiers, G. G. Phillimore, Leslie Scott, James Simpson, Ant. Vio.

M. Charles Le Jeune : J'ai le plus grand plaisir à appuyer la proposition faite par notre honorable président ; je pense qu'il est inutile d'y ajouter quoi que ce soit et je suis convaincu que les membres seront unanimement d'accord, en remerciant le président d'avoir bien voulu formuler cette proposition et la commenter dans des termes aussi heureux.

M. Justice Kennedy's proposition is carried unanimously.

La proposition de Sir William Kennedy est adoptée à l'unanimité.

Mr. Justice Kennedy (president) : There is a matter I may mention just now. I have received this morning a letter from M. Juan C. Belgrano, of Buenos Ayres, written from Paris, and he desires to inform me as chairman, and through me to inform the conference, of what I am sure the conference will be glad to hear—namely, that a branch of the Committee of Maritime Law has just been established at Buenos Ayres, and he then proceeds to give the names of those gentlemen who have become members, which I need not read. It is a list of names apparently of gentlemen of learning and position, and he says that having heard of the conference here at Liverpool he desires to have communicated to the committee the hope of himself and the branch of the Committee of Maritime Law just established his earnest hope for the realisation of all those things which this meeting is assembled to promote. And then he

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wishes to say that he is extremely sorry personally that matters at the last moment only have prevented his personal presence here, and he wishes the conference to know the great interest which this Argentine branch takes in knowing the result of our deliberations at this conference, which I am quite sure our secretaries will be only too glad to do, by giving him the reports of what we have been fortunately able to do here — (*hear, hear*).

This is the practical end of all the business we can attempt here. The matter of freights must stand over, and I think will probably gain by standing over, until a future conference. Thanking you now for your kindness, I shall vacate the chair which M. Beernaert placed me in originally, and ask him to retnrn again to the place which he dignifies so much more.

(*Traduction orale par* M. Louis Franck)

M. le Président nous a annoncé qu'il venait précisément dé recevoir l'avis qu'une Association nationale de droit maritime vient d'être fondée dans la République Argentine. C'est M. Belgrano, ancien ministre, qui nous en informe. La nouvelle association exprime pour notre Comité Maritime, les vœux les plus chaleureux. Elle ajoute qu'à une réunion prochaine, elle espère bien se faire représenter. M. le Président a exprimé les sentiments de sympathie qui vous animent sans doute tous à l'égard de ce nouvel allié. (*Applaudissements*).

Mr. Aug. Beernaert in the Chair.

M. Aug. Beernaert reprend la présidence.

NEXT CONFERENCE — PROCHAINE CONFÉRENCE

M. F. Berlingieri (Gênes) : Au nom de l'Association italienne de Droit Maritime, j'ai l'honnneur d'inviter le

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Comité Maritime de bien vouloir tenir les assises de la prochaine Conférence en Italie.

Je n'indique pas pour le moment le nom de la ville où pourrait être fixé le siége de cette conférence ; ce sera l'Association italienne qui, d'accord avec le Comité Maritime, délibérera sur ce point.

Il est bien certain, Messieurs, que les villes maritimes de mon pays qui ont de si glorieuses traditions dans le commerce maritime et dans le droit qui le régit, ayant été, — permettez-moi de le dire, — le berceau des principales institutions juridiques qui règlent aujourd'hui le commerce et la navigation — il est bien certain, dis-je, qu'elles vous recevraient avec la plus grande sympathie et cordialité, pour honorer l'œuvre grandiose et féconde de l'unification du droit maritime que vous poursuivez, cette œuvre qui semblait, il y a peu de temps, irréalisable et qui, grâce à vous, sera bientôt un fait accompli. (*Applaudissements*).

(*Verbal translation*).

M. Berlingieri desired, in the name of the Italian National Association, to invite the committee to hold its next conference in Italy, He will not name the city where the meeting could be held, that would be a matter for later arrangement between the Italian Association and the Committee. He added that the delegates would probably all agree with him that to meet in anyone of the great commercial cities of Italy would be in itself an inspiration. The fact that the committee which devoted its efforts to the unification and the improvement of national laws should hold meetings in one of those ancient and glorious cities where transmarine commerce really first had its start should be of value to the movement, which he described as one of grandiose effects. The committee could be perfectly sure of having a most sympathetic and cordial reception in Italy, and he hoped that there would be a further development and a further move towards the completien of the valuable work which seemed lately so impossible, and which now seemed so near realisation, at least in part. (*Applause*).

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M. Aug. Beernaert (Bruxelles). Je pense, MM., que nous serons unanimes pour accepter avec gratitude l'aimable invitation que nous transmet M. Berlingieri, sous réserve d'examen ainsi qu'il est d'usage.

Adopté. — Carried.

VOTES OF THANKS — REMERCIEMENTS

M. Beernaert. Il nous reste à remplir le devoir le plus agréable de cette charge, c'est celui d'adresser de vifs remercîments à tous ceux qui nous ont si bien accueillis à Liverpool et qui pendant ces jours heureux, nous ont garanti une hospitalité si cordiale et si remarquable.

Nos remercîments doivent aller tout d'abord à la ville de Liverpool et à son Lord Maire. Je vous propose de les exprimer unanimement. (*Applaudissements*).

Ensuite, à ceux qui ont organisé le superbe banquet qui nous a été offert mercredi dernier. Ce sont : la Chamber of Commerce et son honorable président, Sir Alfred Jones, l'American Chamber of Commerce de Liverpool, la Liverpool Steamship Owners' Association, the Bar of Liverpool la Law Society et les présidents de ces diverses Associations. — Ici encore, nous serons certainement unanimes dans nos applaudissements. (*Applaudissements*).

Enfin, nous devons des remercîments à la Compagnie Cunard pour la splendide réception à bord du steamer « Campania » sur la Mersey ; ici encore, je n'en doute pas, vos remercîments seront aussi cordiaux qu'unanimes. (*Applaudissements*).

M. Beernaert moved from the chair that a most cordial vote of thanks from the members of the conference be tendered to the city of Liverpool and its Lord Mayor, to the Chamber of Commerce and Sir Alfred Jones, to the American Chamber of Commerce, the Liverpool

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Steamship Owners' Association, the Liverpool Law Society and their Presidents, the members of the Bar of Liverpool, and the Cunard Company and its Directors, for the splendid receptions all those bodies had offered to the foreign members, who were the guests of the city and of them during the conference (*applause*).

M. Dr. BRANDIS (Hambourg). MM. Au nom des délégués de toutes les nations représentées ici, je me joins aux remercîments prononcées par l'honorable président de notre Comité.

Nous savons très bien que beaucoup de travail s'est fait encore derrière les coulisses et qui n'a pu apparaître dans ces séances.

Nous avons beaucoup à remercier le Président Mr. Justice Kennedy, qui nous a sacrifié son temps et qui a conduit ces débats d'une façon aussi sympathique qu'impartiale. (*Applaudissements*).

(*Traduction*).

All the delegates of the foreign nations will no doubt most cordially agree with Mr. Brandis when he said they were very much obliged to their excellent president, Mr. Justice Kennedy, who had presided over their deliberations during the conference with ability and impartiality. They would be very glad if success crowned their efforts for the benefit of marine shipping in all nations, and they hoped that the result of what Mr. Justice Kennedy had done for the conference would crown him with merit (*applause*).

M. RÉNÉ VERNEAUX (Paris). Messieurs, Je m'associe, au nom de la délégation française, aux hommages qui viennent d'être adressés à notre honorable président.

Nous avons beaucoup discuté et la question de la limitation de la responsabilité tout spécialement; nous avons demandé même deux limitations, mais en ce qui concerne notre reconnaissance pour notre éminent président, je pense qu'il ne doit pas y avoir de limitation. Nous avons

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contracté envers lui une dette de reconnaissance dont nous nous souviendrons toujours. Au nom de l'Association française qui n'est malheureusement pas très nombreuse ici, ainsi qu'au nom de MM. Lyon-Caen, Autran, Govare, Marais, de Valroger, qui n'ont pas pu se rendre à cette réunion et auquel j'associe aussi le nom de M. André Le Bon, comme celui des Messageries Maritimes et du Comité Central des Armateurs de France qui représente la totalité du tonnage français, — qu'il me soit permis de dire que tous ces messieurs sont de cœur avec nous et collaboreront d'une façon efficace à l'œuvre que nous avons entreprise.

Sous le bénéfice de ces sentiments, je renouvelle mes plus chaleureux remercîments à Sir William Kennedy. (*Applaudissements*).

(*Traduction*)

M. Verneaux said they had been labouring in the direction of securing a good system of limitation of liability, and they had even got a twofold basis for that limitation, but as far as their obligation to their president was concerned, they did not care for any limitation at all -- (laughter and applause). Then, as far as the matter of liens was concerned, they were of the opinion that some kind of solidarity lien had been established between the president and the delegates — (*applause*). M. Verneaux added that he was, therefore, very glad, especially in his capacity of French delegate, speaking not only for himself but also for those French gentlemen who had not been able to be present at the meeting and for the French Association, to support most heartily what had fallen from his German colleague, Dr. Brandis, in expressing the thanks of the meeting to Mr. Justice Kennedy for the able way in which he had discharged his duty as chairman — (*applause*).

Mr. Justice Kennedy : I shall not detain you with many words, but I need hardly tell you that what I say is most cordially sincere. I thank you all most heartily. I have felt it a very great pleasure as well as, of course,

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a high honour to have been allowed to take the part that I have been allowed to take in these deliberations. It would, in any place, to me have been a great pleasure, while it is also a great responsibility, but to me to sit here and to assist in these deliberations in the position which you have done the honour to confer upon me, in the city of Liverpool, has added a good deal even to the pleasure which I should otherwise have felt. I am sure there is no man in England who would put Liverpool second to any place where maritime interests are concerned, and to me especially all that concerns Liverpool is very near my heart. I thank you all. I wish I could have done more. I have had such assistance from the admirable secretaries that really my duties would have been nothing in any case, but they have been made absolutely nothing by the kindness, courtesy and consideration which has been extended to me in endeavouring to the best of my power to do my duty to assist, to help you. (*Applause*).

M. Charles Le Jeune (Anvers). — Dans une œuvre comme la nôtre, de longue haleine, on a parfois des moments, — je ne dirai pas de découragement, car cette idée n'a jamais un seul instant pénétré dans notre cerveau, — mais cependant des moments de crainte. L'œuvre en effet est difficile, et quand nous l'avons entreprise, peut-être ne pouvions-nous pas mesurer toute l'étendue du problême que nous avions à résoudre. Au fur et à mesure que notre tâche s'avance, notre confiance s'affirme et au moment même où nous sommes à Liverpool, nous pouvons constater que notre Comité gagne considérablement en force par les appuis efficaces qui nous ont été prodigués ici.

Vous avez entendu les orateurs qui ont présenté l'hommage de notre gratitude à ceux qui nous ont si admirablement reçus et secondés. Mais il me reste à nommer parmi

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les organisateurs, ceux qui ont eu une lourde tâche, les ouvriers de la première heure, auxquels nous sommes redevable pour une large part des concours qui nous ont été prodigués. J'ai nommé MM. Gow, Leslie, Scott et Barker (*applaudissements*). Ces messieurs se sont vraiment dévoués à l'œuvre de notre Comité International.

Nous avons acquis en eux de puissants collaborateurs et de grands amis. J'espère qu'ils le resteront.

Je leur exprime notre profonde reconnaissance pour ce qu'ils ont bien voulu faire en faveur du Comité Maritime International et de son œuvre.

Je prie aussi MM. les Secrétaires, qui ont si parfaitement secondé ces messieurs au Bureau de la Conférence, de bien vouloir agréer tous mes remercîments.

Nous quitterons Liverpool sous l'impression d'une réception inoubliable. Nous emportons avec nous le souvenir, non seulement de la grandeur de Liverpool, mais aussi des sentiments chaleureux de tous ceux que nous avons eu l'honneur d'approcher. (*applaudissements*)

(*Translation*)

M. Le Jeune reminded the members that beyond the labour of the conference a considerable amount of time and energy and intelligence had been given to the International Maritime Committee in Liverpool by three gentlemen to whom he wanted to move a formal vote of thanks—viz Mr. Gow, Mr. Leslie Scott, and Mr. Barker. (*loud applause*)

He also moved a vote of thanks towards the Secretaries of the Bureau. (*applause*)

M. Fr. Berlingieri (Gênes) : Je demande la parole pour appuyer de toutes les forces de mon âme, les paroles de M. Le Jeune. L'organisation de cette conférence a été merveilleuse, permettez-moi de le dire, et nous devons tout cela aux secrétaires qui l'ont organisée.

Permettez-moi aussi d'exprimer les plus chaleureux

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remercîments à la presse anglaise qui nous a aidé dans cette besogne, qui nous a donné des comptes-rendus merveilleusement exacts, d'heure en heure, on peut le dire. Je crois que vous serez tous d'accord avec moi pour adresser des remercîments à la presse anglaise. (*Applaudissements*).

(*Traduction*)

Mr. Berlingieri, seconded in high terms the motion of Mr. Le Jeune. He also desired to expres special thanks to the English Press, whose marvellous reports so complete and so rapidly circulated and whose support deserve our gratitude (*Applause*).

M. L. Benyovits (Fiume) : Permettez-moi d'exprimer notre grande reconnaissance pour le chaleureux accueil que nous a fait cette ville de Liverpool.

Je tiens aussi à exprimer, au nom de l'Association hongroise, nos vifs remercîments à nos honorables présidents, Sir William Kennedy et M. Auguste Beernaert. (*Applaudissements*).

Translation.

M. L. Benyovits (Fiume) in the name of the Hungarian Association expressed cordial thanks to the city of Liverpool, to Sir William Kennedy and Mr. Auguste Beernaert. (*Applause*)

Mr. Leslie Scott (Liverpool) : On behalf of the secretaries, I have to thank you all for the extremely gracious words which have been pronounced on your behalf. If we have been able to do anythtng to further the great object of this conference, that fact alone will be an ample reward.

Mr. President then closed the session of the Conference.

M. le Président déclare la session close.

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Séance Administrative.

Assemblée Générale des Membres Permanents du Comité Maritime International.

Après la clôture de la Conférence, les membres permanents du Comité Maritime International se sont réunis en assemblée générale annuelle, sous la présidence de M. Aug. Beernaert.

M. Louis Franck. (Secrétraire général). MM., l'objet de notre séance administrative est fort limité. Vous avez bien voulu approuver à diverses reprises, les nominations faites par le Bureau entre les conférences d'Amsterdam et de Liverpool, de différents membres du Comité.

Nous avons à vous proposer encore aujourd'hui différentes nominations. Le Bureau a pensé qu'il convenait de de reconnaître par trois nominations les services considérables rendus, spécialement à l'occasion de cette conférence, à notre œuvre ; je veux parler de Sir William Kennedy, Monsieur Leslie Scott et Monsieur William Gow.

Pour l'Allemagne, Monsieur Alfred Sieveking rend, depuis longtemps déjà, des services signalés à notre œuvre. Je proposerais sa nominalion comme membre permanent, en même temps que celle de M. Johan Kothe qui s'est intéressé beaucoup à notre œuvre et qui pourra nous seconder, dans le monde des affaires d'une façon fort appréciable.

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M. Charles Le Jeune. (Vice-Président). Nous avons eu le regret de perdre, au cours de cette année, un des membres les plus anciens de notre Comité : M. l'avocat Jules Vrancken, d'Anvers.

Nous avons en Belgique un ami qui a toujours été très dévoué à notre œuvre et dont la scienee et l'activité nous assurent un concours efficace ; je veux parler de l'avocat Mtre Charles Bauss d'Anvers. Je le propose comme membre permanent pour la Belgique.

M. Louis Franck (Anvers). Il y aura lieu, aussi de confirmer les nominations déjà faites au cours de cette année par le Bureau Permanent, notamment celles de Son Excellence M. Victor Concas (Madrid) M. le Dr. Fromageot (Paris) et M. le lieutenant-colonel Ovtchinnikoff (St-Pétersbourg).

M. Aug. Beernaert (Président) : L'assemblée après consultation, nomme, à l'unanimité, en qualité de membres permanents du Comité Maritime International :

Sir William Kennedy (Londres)
Leslie F. Scott (Liverpool)
William Gow (Liverpool)
Dr. Alfred Sieveking (Hambourg)
Joh. Kothe (Hambourg)
Charles Bauss (Anvers)

et confirme les nominations de

MM. Victor Concas (Madrid)
le Dr. Fromageot (Paris)
le Lieut.-Col. Ovtchinnikoff (St-Pétersbourg).

L'assemblée décide en outre de donner au Bureau Permanent, et ce jusqu'à la prochaine conférence, les pouvoirs nécessaires pour faire de nouvelles nominations, si celles-

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ci devenaient nécessaires par suite de circonstances imprévues.

M. Louis Franck, secrétaire-général, communique à l'assemblée que des Associations nationales de Droit maritime sont en formation en Espagne et en Russie.

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ERRATUM

Page 137 — 27th line: Then there is *another* one-seventh liners &c.

It should be: THEN THERE IS ONE-SEVENTH LINERS, &c.

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